Office of the Inspector General
U.S. Department of Justice

Audit of the Department of Justice's Management of International Fugitive Removal Activities

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AUDIT OF THE DEPARTMENT OF JUSTICE'S MANAGEMENT OF INTERNATIONAL FUGITIVE REMOVAL ACTIVITIES

EXECUTIVE SUMMARY

The U.S. Department of Justice (DOJ or Department) is responsible for the investigation and apprehension of fugitives who have fled the United States to foreign countries to avoid prosecution or incarceration. DOJ uses various judicial methods to return these fugitives to the United States, including extradition.[1] The United States Marshals Service (USMS) is the federal government's primary agency tasked with returning to the United States international fugitives who are wanted on federal, state, or local charges.

The USMS requested that the Office of the Inspector General (OIG) review the USMS's international fugitive removal process, with a specific emphasis on the Department's assistance in managing and controlling the "spiraling cost" of returning international fugitives to the United States for judicial proceedings. According to the USMS's records, between FY 2010 and FY 2013, the actual cost of all USMS removal activities increased by over 65 percent, from $3.2 million to remove 646 international fugitives in FY 2010 to $5.3 million to remove 875 international fugitives in FY 2013.[2] We also noted that in FY 2011 and FY 2012, the actual removal-related costs exceeded the amount budgeted. USMS officials told us that when their removal activity costs exceeded the amount budgeted, the agency was forced to cover the difference by using funds it had originally allocated for another purpose, such as sex offender investigations.

In response to the USMS's request, we conducted this audit to evaluate: (1) the Department's oversight of international fugitive removal activities, including its role in the removal decision making process; and (2) the USMS's management of removal-related activities associated with international fugitives, including coordination with federal, state, and local law enforcement entities; strategic data management; and the efficiency of removal-related activities, including the cost effectiveness of these processes. We focused on international fugitive removal activities occurring between FY 2010 and FY 2013.

Department-wide and government-wide coordination is a critical piece of the international fugitive removal process. The USMS works with the Criminal Division's Office of International Affairs (OIA), other DOJ law enforcement

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[1] An extradition is the formal process by which an individual found in one country is surrendered to another country for trial or punishment. The extradition process is regulated by treaty.

[2] In addition to handling the removal of international fugitives to the United States, the USMS assists foreign countries in their efforts to remove from the United States fugitives wanted by other countries. Because the USMS does not distinguish between these activities in its accounting records, the total costs reflected encompass both activities. For our review period, the USMS's records indicate that it was involved in the removal of 3,529 individuals in total, 3,172 of which (90 percent) were removals from a foreign country to the United States.

components, prosecutors, the Department of Homeland Security (DHS), and the Department of State to execute the transportation of international fugitives in these removal events. DOJ officials involved in the decision making process stated that they had not encountered any coordination issues with the USMS on the removal of international fugitives to the United States and spoke highly of the USMS's efforts in this regard.

Despite this successful coordination, we identified a disconnect within the removal process between those approving the removal of international fugitives and those executing the removal. The USMS, which has primary responsibility for funding and executing removal activities, is not involved in the decision-making process when individual removal events are considered. Rather, the prosecutor of the case, in consultation with the OIA, ultimately decides whether a fugitive should be removed to the United States. We found that the prosecutor considers many factors when making this decision, including the criminal charge, potential sentence, and citizenship of the international fugitive, but the prosecutor is not provided with the USMS's cost information.

We believe that this disconnect is significant in light of the widely varying, and at times significant, costs of removals. We found that the cost to transport international fugitives varies depending on many factors, including the type of travel, length of trip, and number of USMS personnel required to conduct the removal. While some removal events are conducted without any cost or with minimal cost, we identified several removal events that cost the USMS over $200,000 each.[3] Given the impact that these high-cost removals can have on the USMS budget, we believe that Department officials should be aware of the estimated costs as one of the factors to consider before making a final removal decision.

In addition, we believe the Department can improve its process for considering the possible case outcome in conjunction with estimated removal costs when considering whether to approve a removal. We reviewed a sample of 145 removal activities and identified 11 instances where fugitives received a sentence of "time served" after being returned to the United States. The total removal costs associated with removing these 11 international fugitives to the United States was $177,243. Further, 5 of these 11 fugitives were non-U.S. citizens, meaning that immediately following sentencing they were turned over to the custody of the DHS for deportation out of the United States. This resulted in additional incarceration and transportation costs, which were born by the DHS. In addition, we are aware of at least one prosecution that was dismissed after the non-U.S. citizen was returned to the United States at a reported cost of over $13,000.

In its written response to a draft of this report (attached as Appendix 3), the Department agreed that it is appropriate to consider whether the expenditure of

[3] USMS officials told us that some removal events from Mexico may involve simply walking or driving the fugitive across the U.S. border, resulting in little to no cost to the USMS.

resources is merited for a removal, and also informed us that although the 11 defendants referenced in the prior paragraph were sentenced to "time served," the defendants each served an average of approximately 20 months in prison in the foreign jurisdiction while awaiting extradition, in the U.S. while awaiting sentencing, or a combination of both. The Department further stated that in all instances, the defendants pleaded guilty to at least one of the felony charges against them, and that after returning to the United States several of the defendants cooperated with the government in its investigations of others.[4] While we understand that returning international fugitives to the United States may result in some jail time, cooperation, or an order for restitution or forfeiture, this should not preclude the Department from analyzing the outcomes of similar cases and considering whether the potential outcomes warrant the expenditure of USMS resources, which are not unlimited and which could financially impact the USMS's ability to fulfill its other important responsibilities. We believe that, in light of the 11 cases noted above, the decision-making process can be enhanced by tracking and analyzing prior case outcomes and using this information in managing future removal activities. Moreover, the Department's research into the outcomes of these 11 defendants, which had not been done prior to its review of our draft report, indicates that there is value in the Department conducting this type of analysis.

Additionally, we believe that the Department should consider implementing a cost-sharing model for international fugitive removal activities. The use of a cost-sharing model could relieve some of the cost concerns related to removals that the USMS expressed to us and simultaneously create institutional incentives for others in the decision-making process – including federal, state, and local prosecutors – to include the cost of the removal activities as one of several factors that are considered before making removal decisions. As part of this effort, we believe the Department should also consider the appropriateness and availability of DOJ non-component specific funding sources that could be used to fund international fugitive removals and be incorporated into the cost-sharing model.

We also reviewed the USMS's management of the data it maintains about removals and their cost. We found that the USMS uses this data for responding to inquiries from USMS senior management, DOJ, or external parties such as Congress, but does not use it to strategically assess or manage its operations. We believe the USMS can improve the management of its program – including its ability to ensure fiscal responsibility with respect to removals – by conducting routine analyses of this data. For example, the USMS could use the data to identify

[4] In addition, the Department's written response noted that many of the 11 defendants were ordered to pay restitution to victims as a result of their guilty pleas, while two defendants were ordered to forfeit the proceeds of their crimes. However, according to case-related information we received from the Executive Office for U.S. Attorneys (associated with the United States Attorney's Offices' prosecution of these 11 defendants) the amounts collected on these debts are significantly less than ordered. For example, in two cases restitution is being collected at a minimal rate and in other cases there has either been no restitution collected or the government has not taken the necessary steps to begin collection. We did not audit the accuracy of the data provided by the Department in its written response or the information provided by the Executive Office for U.S. Attorneys and relied upon the information as provided.

and regularly assess the factors that drive the costs of removals, which we believe would allow the USMS to better assess the costs of its removal activities.

Our audit also identified issues with the accuracy and completeness of the USMS's international fugitive removal data that should be addressed, and we determined that the USMS does not have adequate internal controls to ensure that it is conducting the removal of international fugitives in the most fiscally responsible manner possible. For example, we found several instances where more than the standard number of deputies participated on the removal without adequate written justification, and other instances where there was no documented justification for the use of expensive charter flights to transport fugitives to the United States.

Our audit resulted in nine recommendations to help improve DOJ's management of international fugitive removal activities. These recommendations include enhancing the international fugitive removal activity decision-making process by ensuring decision makers employ a comprehensive assessment of all factors, including costs; examining the feasibility of developing an appropriate cost-sharing model for funding international fugitive removals, including at least partial reimbursement from state and local agencies; and establishing procedures for the written justification of specific details relating to removal events, including the number of deputies transporting fugitives and the use of a charter flight.

AUDIT OF THE DEPARTMENT OF JUSTICE'S MANAGEMENT OF INTERNATIONAL FUGITIVE REMOVAL ACTIVITIES

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AUDIT OF THE DEPARTMENT OF JUSTICE'S MANAGEMENT OF INTERNATIONAL FUGITIVE REMOVAL ACTIVITIES

INTRODUCTION

The U.S. Department of Justice (DOJ or Department) is responsible for the investigation and apprehension of fugitives who have fled the United States to foreign countries to avoid prosecution or incarceration. These individuals are referred to as international fugitives.[5] The United States Marshals Service (USMS) is the federal government's primary agency for fugitive investigations and plays a significant role in ensuring international fugitives are returned to the United States. The events in which the USMS returns an international fugitive to the United States are referred to as "removals." According to the USMS's records, between fiscal year (FY) 2010 and FY 2013, the actual cost of all USMS removal activities increased by over 65 percent in total, from $3.2 million to remove 646 international fugitives in FY 2010 to $5.3 million to remove 875 international fugitives in FY 2013.

The USMS requested that the Office of the Inspector General (OIG) review the extradition process, with a specific emphasis on the Department's assistance in managing and controlling the "spiraling cost of extraditions."[6] In response to this request, we conducted an audit of the DOJ's management of international fugitive removal activities.

DOJ Removal Process

DOJ uses various judicial methods to remove international fugitives to the United States, as defined in Exhibit I-1. The removal method is selected based on circumstances related to the fugitive, including citizenship, location, and the charge against the fugitive.

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[5] In turn, the term "domestic fugitives" refers to individuals wanted in the United States who have fled to another location within the United States. The USMS is tasked with apprehending international fugitives and domestic fugitives wanted on federal charges.

[6] Extraditions are defined in Exhibit I-1.

EXHIBIT I-1
TYPES OF INTERNATIONAL REMOVAL EVENTS

Method	Description
Extradition	A process by which an individual found in one country is surrendered to another country for trial or punishment. The extradition process is regulated by treaty and conducted between the U.S. government and the government of a foreign country.
Deportation	A process that follows immigration laws and can occur if the individual is a U.S. citizen and not a national or lawful resident of the country in which he or she is located.
Expulsion	A process used to remove a fugitive from a foreign country immediately if the individual is not a citizen of that country. Expulsions do not follow a formal process like extraditions, and they may or may not fall within the immigration laws and procedures of the foreign country where the fugitive is located.
Mutual Legal Assistance Treaty (MLAT)[7]	The USMS, at times, transports in-custody witnesses required for court appearances under the authority of mutual legal assistance treaties (MLAT). MLATs refer to the international movement of in-custody witnesses from a foreign country to the United States, or vice versa, for the purpose of providing testimonial evidence. (These witnesses are not fugitives avoiding prosecution.)

Source: DOJ

Although the USMS is the primary component within DOJ responsible for physically transporting international fugitives from foreign countries to the United States, other DOJ components are involved in the removal process, including federal prosecutors and investigators, and the Criminal Division's Office of International Affairs (OIA).[8] The following sections briefly describe the roles and responsibilities of DOJ components with respect to international fugitive removal activities.

United States Attorneys' Offices

The United States Attorneys' Offices (USAO) are responsible for prosecuting international fugitives wanted on federal charges. Assistant U.S. Attorneys within the USAOs are notified when a fugitive is located abroad, and they, in turn, work with the OIA to prepare documentation to remove the fugitive.

Office of International Affairs

The OIA, which is a component within DOJ's Criminal Division, formally receives requests from federal, state, and local prosecutors to remove international fugitives. The OIA, in turn, provides guidance to prosecutors on whether to remove an international fugitive and reviews documentation submitted from prosecutors for

[7] Between FY 2010 and FY 2013, the USMS conducted 12 MLAT removals. Although the in-custody witnesses are not fugitives avoiding prosecution, the USMS handles the removal of these individuals in the same manner as it does the removal of international fugitives. As a result, the USMS includes in-custody witness (or MLAT) removals as part of its international fugitive workload. Therefore, for purposes of this report, we include MLAT removals as part of the USMS's international fugitive workload.

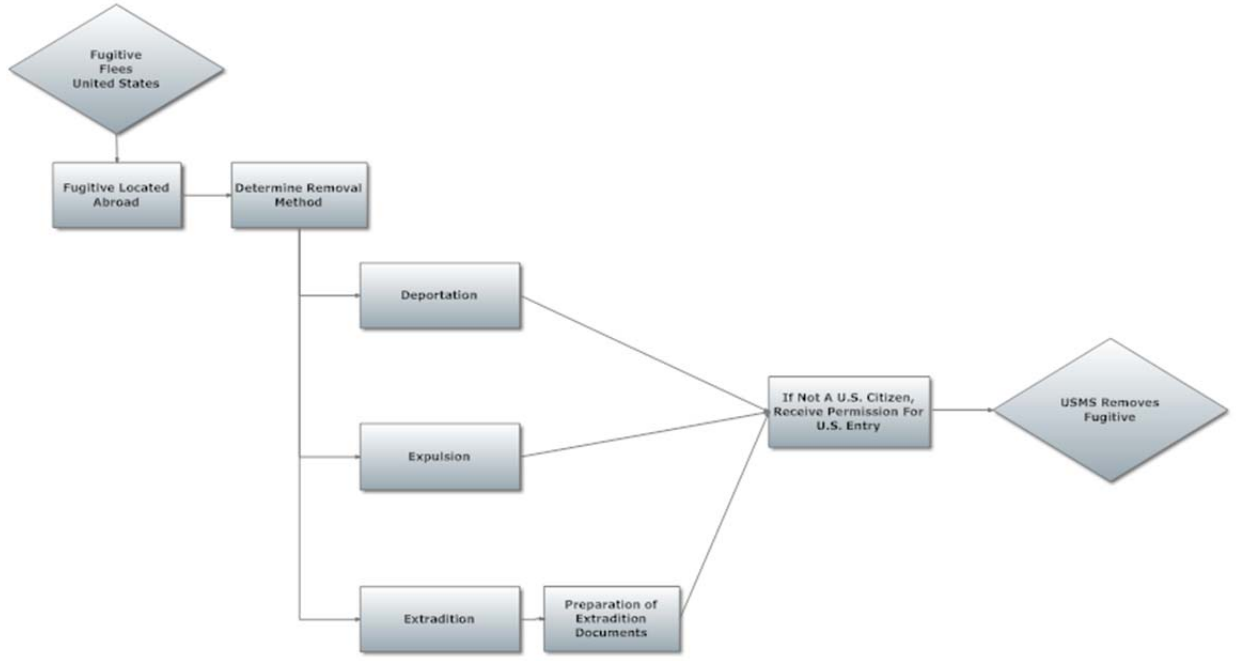
[8] When international fugitives are wanted on state or local charges, state and local law enforcement agencies and prosecutors will also be involved in the removal process.

accuracy and completeness. The OIA also works with foreign governments to determine which removal method to use and forwards to the foreign governments the necessary paperwork for the removal of international fugitives. When a foreign government notifies the OIA that the international fugitive can be removed, the OIA works with the USMS to coordinate the removal of the subject from the foreign country.

Investigative Agencies

The Federal Bureau of Investigation (FBI); the Drug Enforcement Administration (DEA); the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); and the USMS each conduct fugitive investigations to locate individuals who have fled the United States to avoid prosecution. However, the USMS is the primary DOJ component tasked with the removal of international fugitives to the United States. Once an international fugitive is located abroad and the OIA provides notification that the fugitive is ready to be removed to the United States, the USMS coordinates the removal of the international fugitive and often participates in the transportation of the individual. At times, the FBI, DEA, or ATF will either accompany the USMS on the removal or personnel from these agencies will conduct the removal on their own. However, based upon discussions with FBI, DEA, and ATF personnel, the USMS handles nearly all of the international fugitive removals. Exhibit I-2 displays the overall removal process.

EXHIBIT I-2
OVERVIEW OF THE INTERNATIONAL FUGITIVE REMOVAL PROCESS



Source: OIG depiction based upon review of USMS documentation

USMS Removal Activity Workload

The USMS's International Investigations Branch (IIB), an organizational unit within the Investigative Operations Division, is responsible for coordinating the pursuit and apprehension of international fugitives. The IIB is also responsible for coordinating international fugitive removals, which includes ensuring U.S. officials have the proper country clearance to enter a foreign county, assessing the threat of the subject being removed, and making the necessary travel arrangements for executing the removal.

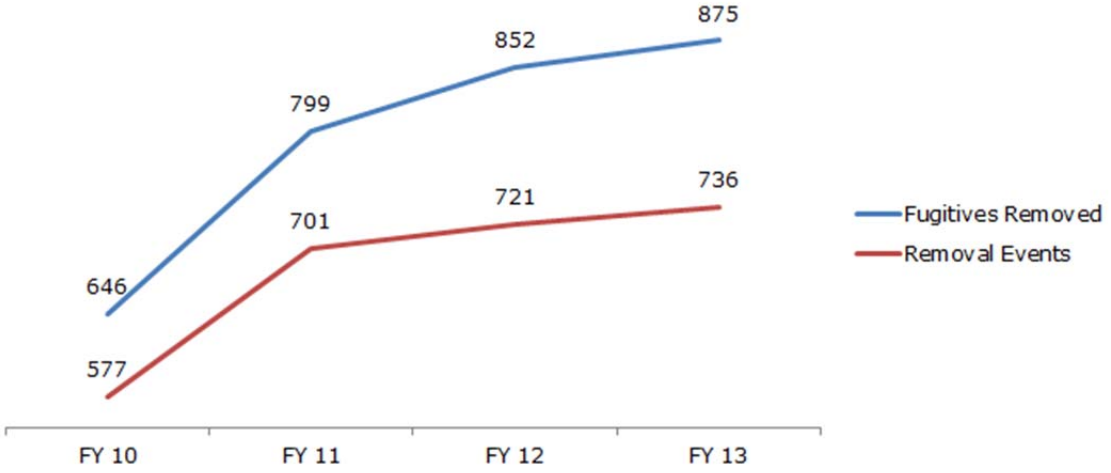
The IIB is comprised of senior inspectors and analysts at USMS headquarters, as well as three foreign field offices in Mexico, Jamaica, and the Dominican Republic. Although these individuals, at times, participate in the physical removal of an international fugitive to the United States, the personnel are primarily involved with coordinating the details of the removal of international fugitives. For example, the IIB coordinates with other DOJ law enforcement components, the OIA, the Department of State, the Department of Homeland Security, and foreign governments to provide guidance and direction on the international fugitive removal process. The IIB also coordinates with the USMS district offices because generally it is personnel from USMS district offices representing the jurisdiction where the international fugitive will be prosecuted who conduct the removal activities by traveling to the foreign country and accompanying the international fugitive to the United States.

In addition to the removal of federal international fugitives, the USMS removes state and local international fugitives on behalf of state and local law enforcement agencies. Removing international fugitives is a federal responsibility because state and local agencies do not have the authority to execute the removal of an international fugitive located abroad. As a result, for international fugitives wanted on state or local charges, the federal government must coordinate the legal proceedings with foreign countries and remove the wanted individuals to the United States.

In FY 2010, the USMS returned to the United States 646 international fugitives through 577 separate removal events, as depicted in Exhibit I-3.[9] By FY 2013, the number of international fugitive removal events conducted by the USMS had increased by 28 percent to 736, and the number of international fugitives returned had increased to 875, an increase of 35 percent compared to FY 2010.

[9] Each removal event does not always equate to one international fugitive returned to the United States. When possible, the USMS removes multiple international fugitives at one time. Therefore, the total number of international fugitives removed to the United States and the total number of removal events executed by the USMS differ.

EXHIBIT I-3
USMS INTERNATIONAL FUGITIVE REMOVAL EVENTS
FISCAL YEARS 2010 THROUGH 2013



Source: OIG analysis of USMS data

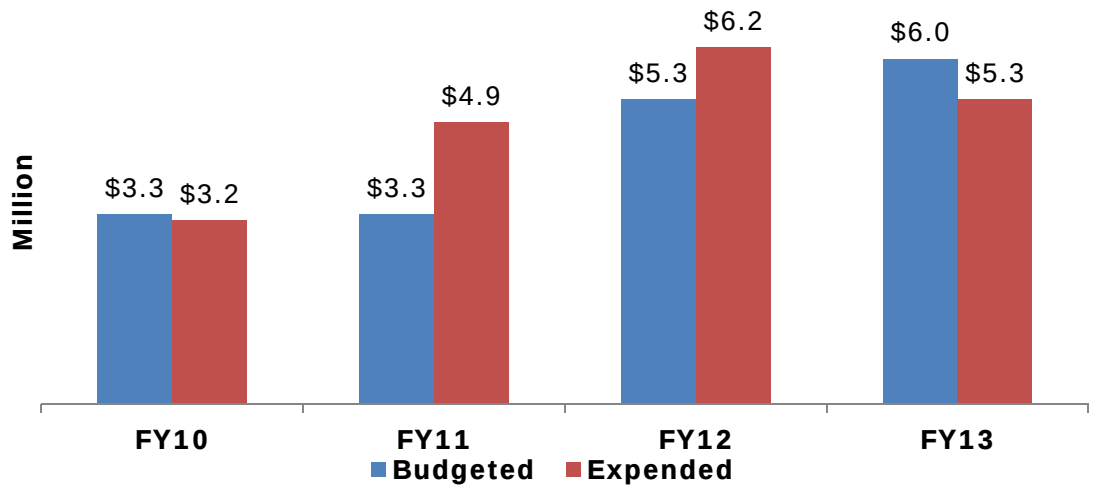
The USMS cannot control the number of international fugitives who need to be returned to the United States; rather, the USMS is simply the DOJ agency responsible for executing the removal event.

As shown in Exhibit I-4, we identified a similar increase in the amount of funding budgeted by the USMS for the IIB, as well as in the actual costs incurred to complete its workload between FY 2010 and FY 2013. Between FY 2010 and FY 2013, the actual cost of removal events increased by over 65 percent, from $3.2 million in FY 2010 to $5.3 million in FY 2013, with a peak of $6.2 million in FY 2012.[10] We also noted that in FY 2011 and FY 2012, the actual removal-related costs exceeded the amount budgeted. For example, in FY 2012 the IIB originally budgeted $5.3 million for removal events, while executing these removal events actually cost $6.2 million. USMS officials told us that when their removal activity costs exceeded the amount budgeted, the agency was forced to cover the difference by using funds it had originally allocated for another purpose, such as sex offender investigations.[11]

[10] In addition to handling the removal of international fugitives, the USMS assists foreign countries in their efforts to remove from the United States fugitives wanted by other countries. Because the USMS does not distinguish between these activities in its accounting records, the budgeted and actual costs reflected in this section and Exhibit I-4 encompass the USMS's international and foreign fugitive workload. Unless otherwise noted, our audit focuses only on the USMS's international fugitive removal events, which the USMS's records indicate comprised about 90 percent of removals during our review period.

[11] This matter is more fully discussed in Finding I.

EXHIBIT I-4
USMS BUDGETED AND EXPENDED REMOVAL COSTS
FISCAL YEARS 2010 TO 2013



Source: OIG analysis of USMS data

IIB officials told us that the budget for removal events is largely derived from the actual cost of conducting the removal activities during the preceding fiscal year. These officials further stated that the cost of removing an international fugitive to the United States varies from one removal to the next due to multiple factors, including the location of the international fugitive, the type of removal method, and any special transportation accommodations. As a result, it is difficult to accurately budget for the cost of removal events because the USMS does not control this workload and the cost-driving factors of each removal are not constant. For example, for FY 2013, the USMS budgeted $6.0 million for removals – an amount approximately equal to the amount expended in FY 2012, but the total FY 2013 costs for removals were ultimately less than either the FY 2013 budgeted amount or the FY 2012 amount expended.

OIG Audit Approach

The USMS requested that the OIG review the extradition process in light of the "spiraling costs" associated with this responsibility and the impact that this has had on the USMS. Our audit objectives were to evaluate: (1) the Department's oversight of international fugitive removal activities, including its role in the removal decision-making process; and (2) the USMS's management of removal-related activities associated with international fugitives, including coordination with federal, state, and local law enforcement entities; strategic data management; and the efficiency of removal-related activities, including the cost effectiveness of these processes. During our audit, we reviewed the USMS's international fugitive removal events occurring between FY 2010 and FY 2013.

The results of our review are detailed in Findings I and II. Finding I discusses the OIG's evaluation of the DOJ's oversight of international fugitive

removal activities, including the decision-making process for determining whether to remove a fugitive to the United States. Finding II provides our assessment of the USMS's management of international fugitive removal events, including the cost effectiveness of the removals.[12]

[12] Because the USMS is the primary DOJ component executing the return of international fugitives to the United States, Finding II focuses on the USMS's management of international fugitive removal events and not the ATF, DEA, and FBI, which only occasionally remove international fugitives.

FINDINGS AND RECOMMENDATIONS

I. DOJ's International Removal Decision-Making Process

Department-wide coordination is critical to the international fugitive removal process. While we found that the USMS successfully coordinates with other federal, state, and local agencies on the operational matters surrounding removal events, we also determined that DOJ has not established sufficient controls over the decision-making process for individual international removals. Under the DOJ's current decision-making process, the Department does not require the USMS to provide removal event cost information, nor does it require prosecutors or senior Department officials to consider the estimated removal cost, which can exceed $200,000 per removal, as one of the factors it evaluates in deciding whether to remove an international fugitive. We found several instances where defendants were removed to the United States only to be sentenced to "time served." Further, in some of those cases, the defendants were non-U.S. citizens, requiring the government to place them in deportation proceedings, at additional cost. We believe that the Department should enhance its current process by establishing a comprehensive, fully informed decision-making process that addresses the operational, judicial, and financial practicality of bringing an international fugitive to the United States to face justice; assess the practicality of tracking and analyzing the outcomes of its removals for use in making future removal decisions; and consider implementing a cost-sharing mechanism to help manage the costs of removal events.

Coordination Efforts on Removal Activities

Department-wide and government-wide coordination is a critical piece of the international fugitive removal process, from determining the removal method to planning for the actual transportation of an international fugitive to the United States. The USMS works with the OIA, other DOJ law enforcement components, prosecutors, the Department of Homeland Security (DHS), and the Department of State to execute the transportation of international fugitives in these removal events. We interviewed officials from several DOJ components, the DHS, and local law enforcement agencies to obtain feedback on their involvement with the USMS on removal activities. These officials stated that they had not encountered any coordination issues with the USMS on the actual removal of international fugitives to the United States. OIA officials described the USMS's coordination with other law enforcement components as "seamless," while other officials we interviewed spoke very highly of the USMS's coordination efforts and the USMS's ability to successfully return international fugitives to the United States.

However, we identified a disconnect within the overall removal process between those approving the removal of international fugitives and those conducting and funding the removal events. Once a fugitive is located abroad, the

prosecutor of the case, in consultation with the OIA, ultimately determines whether the fugitive should be removed to the United States based on many factors, including the criminal charge, potential sentence, and citizenship of the international fugitive; this analysis generally does not consider the costs of the removal activities. In turn, the USMS has primary responsibility for executing the removal and funding the removal event without providing any cost information for use in the removal decision. As a result, we found that the decisions to remove international fugitives to the United States do not appear to be based on a comprehensive assessment of the operational, judicial, and financial practicality of returning international fugitives to the United States for prosecution. We believe that the Department, at the leadership level, should be aware of the estimated cost of a removal event in order to make a more fully informed decision. Given that we identified removal cases for which the international fugitive received a sentence of "time served," we also believe the Department could enhance its consideration of potential case outcomes during the removal decision-making process. We further examine the decision-making process, including an examination of removal case outcomes, later in this chapter, but first we focus on the potential costs associated with individual removal events.

Removal Costs

The USMS is the primary DOJ component tasked with fugitive apprehension, and the USMS assumes nearly all costs associated with removal events.[13] According to USMS officials, several factors affect the costs associated with conducting removal events, and these factors are generally outside of the USMS's control. One of the most significant cost-driving factors is the type of travel required to remove the international fugitive. USMS officials stated that they cannot always use commercial airlines to safely and securely transport international fugitives. In such instances, the IIB must contract to use private aircraft (charter flights) to remove international fugitives, and this is considerably more expensive than commercial airfare. An IIB official further noted that they are sometimes given a short amount of time to arrange for and execute a removal event and that procuring international airfare in this fashion can be more costly. The IIB officials also stated that depending on the circumstances surrounding the removal event, the USMS may have to send more than the standard number of Deputy U.S. Marshals (deputies) and that, in turn, will affect the cost of the removal. The specific location of the fugitive may also affect the cost of a removal activity. For example, IIB officials told us that some removal events from Mexico may involve simply walking or driving the fugitive across the U.S. border, resulting in little to no cost to the USMS. Conversely, some removal events may require lengthy or numerous international flights to reach remote areas and will result in higher costs for the USMS. Moreover, commercial airfare to certain areas such as Central America or the Caribbean is generally less costly than airfare to the continents of Asia or Africa. For those removals in which the USMS's records

[13] According to USMS and OIA officials, the USMS bears all costs associated with international removals except for language translation costs, for which prosecutors are generally responsible.

indicate that a cost was incurred, the amounts expended ranged from under $100 to over $280,000.[14]

Use of Charter Flights

USMS officials stated that removal event costs are most affected by the need for charter flights. During FY 2010 through FY 2013, the USMS used 107 charter flights to remove at least 326 international fugitives to the United States.[15] These charter flights accounted for 4 percent of its 2,735 removal events between FY 2010 and FY 2013, transporting 10 percent of the 3,172 international fugitives removed to the United States during this timeframe. However, the USMS's data indicates that these charter flights cost the USMS approximately $8.1 million, which represented over 40 percent of the IIB's total removal event costs.

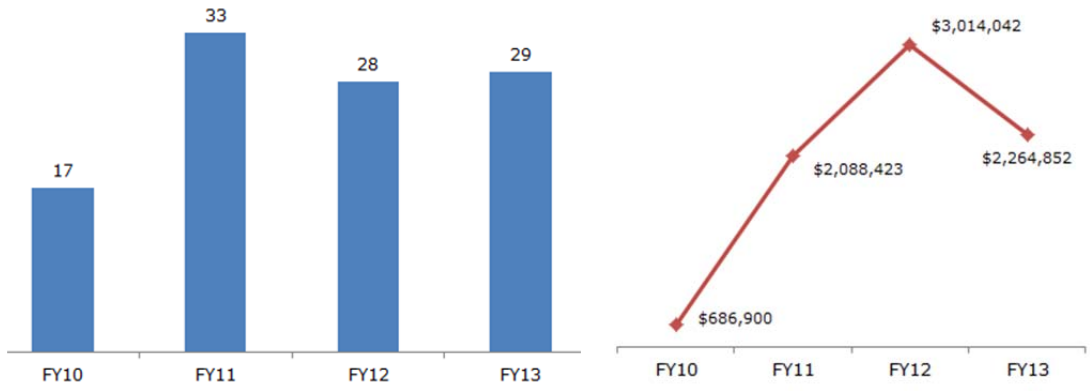
As shown in Exhibit 1-1, from FY 2010 to FY 2013, the amount the USMS spent on charter flights increased by 230 percent (from $686,900 in FY 2010 to $2,264,852 in FY 2013). The number of charter flights also increased from 17 charter flights in FY 2010 to 29 in FY 2013. Based upon the USMS's data, the average cost of a charter flight between FY 2010 and FY 2013 was $75,273, with the most expensive charter flight totaling more than $280,000.

[14] The USMS maintains data on its removal-related costs. As discussed in Finding II, we have concerns with the accuracy and completeness of the USMS's cost-related data associated with individual removal events. As a result, the individual removal costs discussed in the report may actually be more or less than what is stated. However, we provide these figures because: (1) it is the only cost information available for individual removal events, and (2) the data provides a general idea of the cost of individual removals. Appendix 1 contains a discussion concerning the reliability of this data and our use of it.

[15] We were unable to determine the exact number of fugitives removed using charter flights during FY 2010 and FY 2011 because the USMS did not maintain complete information during those fiscal years.

EXHIBIT 1-1
ANALYSIS OF CHARTER FLIGHTS
FISCAL YEARS 2010 TO 2013

NUMBER OF CHARTER FLIGHTS | **COST OF CHARTER FLIGHTS**



Source: OIG analysis of USMS data

Our analysis of removal events illustrates that the use of charter flights greatly contributes to the IIB's removal event costs. IIB officials described various reasons that dictate the use of chartered aircraft rather than commercial airlines.

Controlled Substances Act and Other Extraterritorial Cases ("959" Cases) – According to the USMS, there are certain circumstances that dictate the use of charter flights, such as consideration of the special venue provisions for offenses committed outside of the territory of the United States. For drug offenses under the Controlled Substances Act, this venue provision is found in 21 U.S.C. 959, and the general provision for other extraterritorial offenses is 18 U.S.C. 3238. In our report, we refer to these cases collectively as "959" cases. These provisions state that, in many instances, a person who is apprehended on such charges outside the United States must be tried in the judicial district where he or she first arrives into the United States. As a result, the USMS must ensure that a "959" fugitive is taken directly to the federal judicial district where the original charge was brought so that prosecutors responsible for the case can handle the prosecution. This can be problematic when commercial airlines do not offer direct flights to a particular federal judicial district.

Therefore, the USMS, at times, must contract with a charter air carrier simply to ensure that the fugitive will travel directly to the district where he or she will be tried. For example, the Southern District of New York does not have a major international airport, yet many narcotics and high-profile cases are charged in this district. When the USMS must remove a "959" fugitive to the Southern District of New York, the airplane must therefore land at the Westchester County Airport in White Plains, New York, to establish venue within the Southern District of New York's jurisdiction. To accomplish this, the USMS must often charter aircraft to

satisfy the "959" requirements and ensure that fugitives first land within this judicial district.[16]

IIB officials expressed concern with the growing number of "959" cases and the resulting increased costs for the USMS. These IIB officials stated that they had consulted with the USMS's Office of General Counsel (OGC), which confirmed that "959" cases should be handled in this manner. During our audit, we confirmed that the USMS OGC has interpreted the Controlled Substances Act such that the venue of trial for controlled substances offenses is established at the point of entry where the defendant first enters the United States, defined by where the aircraft first touches down. We also found that the Criminal Division has agreed with the USMS OGC's interpretation and has concluded that the initial transport of an international fugitive to a district other than one where charges have been filed jeopardizes venue in the district where the defendant is charged. For example, according to the Criminal Division's interpretation, the venue of a "959" case filed in the District of Arizona may be jeopardized if the subject is brought to the United States and first lands in the Central District of California to refuel before being brought to appear before a magistrate in the District of Arizona.

The Department should determine if it is prudent to seek modifications to the extraterritorial venue statutes in light of the significant costs associated with charter flights, and of the fact that charter flights are used primarily to ensure that inbound international aircraft carrying "959" fugitives do not land (even temporarily, such as to refuel) in locations other than the judicial district where the fugitives will be tried. If the Department deems that a legislative change is necessary, the Department should ensure that lawmakers and other stakeholders are made aware of the substantial expense associated with using charter flights to abide by current extraterritorial venue provisions and present lawmakers with a proposal to modify this clause.

Other Reasons For Charter Flight Use – According to USMS officials, in certain instances there may not be commercial flights that enable the USMS to execute a removal as needed, and as a result, the USMS must use a charter flight. As stated by USMS officials, the USMS cannot transport some fugitives on commercial airlines due to medical reasons, or commercial airlines may not allow international fugitives wanted for violent or terrorist charges to fly on their planes. Additionally, there may be security concerns for which the USMS decides a charter flight is the best method of transportation to ensure the safety of the fugitive, USMS personnel, and the general public. The following examples illustrate the significant cost of using charter flights and the variance between the use of charter flights and commercial air travel. Finding II discusses the USMS's controls over its procurement of air travel and the appropriateness of and justifications for using charter flights in certain instances.

[16] The USMS could not provide data on how many of the 107 charter flights used between FY 2010 and FY 2013 involved fugitives wanted for "959" violations. However, we determined that of the approximately 326 international fugitives who were removed using charter flights during this time period, 301 of these fugitives, or 92 percent, were wanted on narcotics charges.

One of the removal events we reviewed occurred in FY 2012 and involved the use of a charter flight from Scotland to Arizona to extradite an international fugitive wanted on narcotics charges. IIB officials stated that the USMS was required to use a charter flight to remove the fugitive due to security issues related to the fugitive. The reported cost of that charter flight was approximately $130,000. In contrast, a similar removal conducted in FY 2013 from Scotland to Arizona using commercial airlines only cost the USMS $5,815, according to the USMS's data.

We also reviewed a June 2012 removal event for which the USMS transported an international fugitive, wanted on narcotics charges, on a charter flight from Jamaica to Minnesota. An IIB official told us that a charter flight was used for this particular removal due to the fugitive's high profile status in the country where he was apprehended and security concerns associated with a similar prior removal from Jamaica. This charter flight cost the USMS over $48,000. In comparison, using the USMS's data, we determined the median cost of conducting a removal from Jamaica in FY 2012 was $1,572.[17]

Other Cost-Driving Factors

The USMS described factors other than charter flights that may influence the cost of its removal events, such as needing to remove a fugitive within a short period of time. In these instances, the urgency of conducting the removal may also result in higher costs because the cost of the airfare may be significantly higher when flights are booked within a few days of the actual trip. In addition, the USMS may find that only premium travel is available in these instances, which will result in the flights being more costly. Although IIB officials stated that, at times, USMS personnel may have had to purchase premium-class airfare as a last resort to comply with the time requirements associated with a removal, only one of the removal events between FY 2012 and FY 2013 that we reviewed involved the use of premium travel.

In addition, the location of the international fugitive can affect the cost of a removal event. Conducting a removal from locations such as Africa or Australia will be more costly than other removals because commercial airfare to and from these regions is generally higher than other locations in closer proximity to the United States. We reviewed two separate removal events that occurred in FY 2012 and involved international fugitives wanted in the Southern District of New York but who were located in different regions. One of the international fugitives was removed from the Dominican Republic to the Southern District of New York with a reported airfare of approximately $1,000 per deputy. The other international fugitive was removed from Hong Kong to the Southern District of New York, with a reported airfare of over $4,000 for each deputy. In such instances involving significantly lengthier distances, the USMS may also incur additional costs resulting from the travel expenses of additional deputies necessary to adequately staff the

[17] The USMS did not conduct any other removal events from Jamaica to Minnesota during our review period. Therefore, we were not able to provide a more specific cost comparison to the FY 2012 charter flight from Jamaica. Instead, we calculated the median cost of a removal from Jamaica in FY 2012 using data for the nine such removals the USMS conducted with a commercial flight.

removal event, as well as the overtime that is likely to be incurred by the deputies on the removal event.

Federal Decision-Making Process

To determine the factors considered in the removal process, we spoke with federal prosecutors from three different U.S. Attorneys Offices, a local prosecutor, OIA officials, and a representative from the Office of the Deputy Attorney General (ODAG). Based on these interviews, we concluded that the decisions to remove international fugitives are generally based on many case-related factors, but these decisions are not influenced by the potentially significant costs associated with transporting international fugitives to the United States. Moreover, the Department does not routinely analyze the outcomes of the international fugitives' prosecutions to ensure that its removal efforts have achieved the intended results. Given the recent budget environment, we believe it is especially important that prosecutors and senior Department officials involved in the decisions to remove international fugitives to the United States be cognizant of the potential outcomes in conjunction with the costs involved with returning these individuals to face prosecution. The following sections further discuss the current decision-making process and additional factors that should be considered to enhance the process.

Considering Cost of Removal Events

Under the current process, the prosecutor responsible for the charges against an international fugitive is notified when the subject has been located. This prosecutor, in turn, must initially decide on behalf of the U.S. government whether the subject should be returned to the United States to face prosecution. The OIA provides guidance to the prosecutor to assist in making this determination.[18] According to OIA officials, the OIA possesses expertise on country-specific treaties and foreign judicial processes. As a result, the OIA opines on the potential success of the removal based on the charge(s), including the severity of the crime, dual criminality, and potential sentence.[19] The OIA will also discuss with the prosecutor the strength of the evidence supporting the case.

After a decision has been made to remove an international fugitive to the United States, the USMS is notified to conduct the removal. According to USMS officials, the USMS must safely and securely complete the removal of the international fugitive regardless of the location and threat level of the fugitive, the time frame in which the removal must be completed, and the costs involved with removing the international fugitive.

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[18] The OIA also works with state and local prosecutors to determine whether to remove international fugitives wanted on state and local charges.

[19] Dual criminality is a requirement in modern extradition treaties that permits the extradition of a fugitive for criminal conduct that if committed in the country where the fugitive is located would also constitute a criminal offense. For example, antitrust offenses are not crimes in many countries. If a fugitive is wanted for antitrust offenses in the United States and flees to a country where antitrust offenses are not criminalized, the country will not grant extradition for the fugitive to be tried for these offenses in the United States.

The current process separates the responsibility of the decision making from the requirement to bear the financial burden of removal activities. As a result, we believe removal decisions are currently made without regard to the cost of the removal. For example, the USMS reported that over $518,000, or 8 percent of the IIB's total FY 2012 expenditures, was spent transporting three individuals in custody in Rwanda to Boston, Massachusetts, to serve as material witnesses (not defendants).[20] Upon completion of the trial, the USMS transported these three individuals back to Rwanda.[21] The USMS deemed that a charter flight was needed to transport the witnesses to and from the United States because these individuals were considered to be a security concern. While we recognize that the need for the testimony of these witnesses may have warranted the substantial removal costs, we found that the individuals making the decision to have the USMS conduct this removal were not required to consider the costs involved.

Reviewing Outcomes of International Fugitive Cases

In addition to considering the potential cost of removal events, we believe that the Department's removal decisions should also consider the outcomes of international fugitive removal cases. Although we were informed that prosecutors and the OIA consider the criminal charges and potential sentence against an international fugitive, we were also told that there has not been an analysis of actual outcomes of such criminal cases.

From the population of 1,727 international fugitives removed to the United States in FY 2012 and FY 2013, we selected a sample of removals including:

- All removal events for which the international fugitives were wanted on federal charges and had a reported removal cost greater than $10,000;
- All removal events for which the international fugitives were wanted on state and local charges; and
- All removal events for which the USMS used a charter flight to transport an international fugitive.

In total, we identified 383 international fugitive cases that satisfied the criteria above. Of these 383 international fugitive cases, we were unable to determine the outcomes related to 238 of these fugitives, as their cases are ongoing or the state and local public resources did not provide us with sentencing information. In reviewing the remaining 145 fugitive cases, we found that 11 of these fugitives received a sentence of "time served" after being returned to the

[20] As noted in the Introduction, the USMS, at times, transports in custody witnesses required for court appearances through mutual legal assistance treaties (MLAT). The USMS conducts these events in the same manner and with the same processes that it does fugitive removals.

[21] The defendant was convicted and sentenced to 10 years in prison.

United States.[22] Therefore, these individuals did not serve time in prison after receiving their sentence. The total removal costs associated with removing these 11 international fugitives to the United States was $177,243. Because we were unable to determine the outcomes of all of the international fugitive cases, there may be additional instances of costly removals that may not have been fully advantageous to the United States in light of the outcomes.

Notably, 5 of the 11 fugitives who received sentences of "time served" were non-U.S. Citizens. International fugitives who are non-U.S. citizens may be removed to the United States for a crime committed against the United States.[23] However, these individuals are then deported to their country of citizenship after they have either been acquitted or served their prison sentence.[24] Thus, the five non-U.S. citizen fugitives who were sentenced to "time served" were required to be deported back to their country of citizenship immediately following the judicial proceeding. As a result, in addition to the USMS spending over $76,000 on these five removal events, the DHS incurred additional costs detaining and then transporting the fugitives to their home countries after sentencing.

In addition to the 11 international fugitives who received a sentence of "time served," we are aware of at least one instance where the USMS removed an international fugitive to the United States and the case was thereafter dismissed.[25] In that case, which occurred in FY 2012, the USMS removed a defendant (who was a non-U.S. citizen and was wanted on narcotics charges) from Hungary to the United States at a reported cost of over $13,000. After being returned to the United States, the prosecution was dismissed by the judge due to a constitutional violation of the individual's right to a speedy trial. Because the individual was a non-U.S. citizen, following the case's dismissal, the individual would have been transferred to the custody of the DHS for deportation out of the United States, resulting in additional costs to the DHS.

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[22] Fugitives may receive credit for time served in foreign custody before extradition to the United States, pursuant to 18 U.S.C. § 3585 (2001).

[23] In these instances, the DHS issues a significant public benefit parole to allow international fugitives to enter the United States and face prosecution. Significant public benefit parole is required for non-U.S. citizens to enter the United States to take part in legal proceedings when there is a benefit to the government. Of the 145 international fugitives for which sentencing information was available, 117 fugitives, or 81 percent, were non-U.S. citizens.

[24] During our audit, we learned of concerns about removing fugitives to the United States who are citizens of countries to which it may later prove difficult to deport them after the completion of the criminal prosecution.

[25] From the state and local public resources used to determine the sentencing information of international fugitives wanted on state or local charges, we were not able to determine if any of these cases were dismissed or if any of the fugitives were sentenced to "time served" only. This information only provided us with the length of sentence for those fugitives who were currently incarcerated at the time of our search. Therefore, it is possible that there are more instances of cases being dismissed or international fugitives being sentenced to "time served" than what the resources available to us showed.

In its written response to a draft of this report (attached as Appendix 3), the Department agreed that it is appropriate to consider whether the expenditure of resources is merited for a removal, and also informed us that although the 11 defendants referenced in the prior paragraphs were sentenced to "time served," the defendants each served an average of approximately 20 months in prison in the foreign jurisdiction while awaiting extradition, in the U.S. while awaiting sentencing, or a combination of both. The Department further stated that in all instances, the defendants pleaded guilty to at least one of the felony charges against them, and that after returning to the United States several of the defendants cooperated with the government in its investigations of other individuals.[26]

While we understand that returning international fugitives to the United States may result in some jail time, cooperation, or an order for restitution or forfeiture, this should not preclude the Department from analyzing the outcomes of similar cases and considering whether the potential outcomes warrant the expenditure of USMS resources, which are not unlimited and which could financially impact the USMS's ability to fulfill its other important responsibilities. We believe that, in light of the 11 cases noted above, the decision-making process can be enhanced by tracking and analyzing prior case outcomes and using this information in managing future removal activities. Moreover, the Department's research into the outcomes of these 11 defendants, which had not been done prior to its review of our draft report, indicates that there is value in the Department conducting this type of analysis.

Department Coordination and Oversight

We met with the ODAG to discuss the potential need for a more comprehensive, fully informed removal activity decision-making process within the Department. The ODAG agreed that the establishment of a more fully informed decision-making process would benefit the Department. Further, the ODAG agreed that many factors would need to be considered, and that a decision should not be based solely upon the cost of the removal. The ODAG suggested a tiered approval system, providing an example that Department-level approvals and justifications for international fugitive removal activities would only be required if the costs of the removal meet a specific threshold, while the remainder would follow a similar process to what is currently happening (i.e., the prosecutors, in conjunction with OIA, decide whether to remove an international fugitive), but would include some identification and acknowledgement of estimated costs.

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[26] In addition, the Department's written response noted that many of the 11 defendants were ordered to pay restitution to victims as a result of their guilty pleas, while two defendants were ordered to forfeit the proceeds of their crimes. However, according to case-related information we received from the Executive Office for U.S. Attorneys (associated with the United States Attorney's Offices' prosecution of these 11 defendants) the amounts collected on these debts are significantly less than ordered. For example, in two cases restitution is being collected at a minimal rate and in other cases there has either been no restitution collected or the government has not taken the necessary steps to begin collection. We did not audit the accuracy of the data provided by the Department in its written response or the information provided by the Executive Office for U.S. Attorneys and relied upon the information as provided.

USMS officials echoed the ODAG's comments, stating that numerous factors would need to be considered in developing a new process, such as ensuring the promptness of the decision and ensuring that the process considers the resources previously expended to investigate the underlying crime and locate the fugitive. However, the USMS officials expressed concern that a central decision-making process could delay the international fugitive removal process and, in turn, affect the USMS's ability to execute the removal in a timely manner.

OIA officials also agreed that cost considerations should be incorporated into the decision-making process when the costs will be significant, such as when the USMS will need to charter aircraft. OIA officials also agreed with the potential for establishing a tiered approach, as suggested by the ODAG.

We understand that the interests of justice dictate that investigators and prosecutors make decisions based on the law, facts, and evidence in each international fugitive case. Moreover, investigators and prosecutors have a duty to protect the rights of crime victims. Nevertheless, prosecutors should be fully aware of the potentially significant costs involved in a removal, and the impact that these costs may have on the USMS's limited funding resources. Currently, however, a disconnect exists between those approving the removal of international fugitives and those executing and paying for the removals. In the end, it is only the USMS that must realize the competing demands for its limited funding resources, which inevitably impacts its ability to address other priority areas, and it does not have the ability to choose between the activities because it does not contribute to the decision making when determining whether to return an international fugitive to the United States.

The Department's prosecutorial and investigative decisions are a key driver of removal costs, and these decisions need to reflect the real and growing impact that the increasing removal costs are having on the USMS's budget and operations. USMS officials have expressed concern with the "spiraling costs" of executing international fugitive removals. Based upon discussions with officials from the USMS's Investigative Operations Division and documentation provided by the USMS, the rising costs of removal events have affected the USMS's other mission areas. For example, in FY 2011 and FY 2012, the USMS stated that its Investigative Operations Division reprogrammed over $2 million of funding from other USMS operational areas to the IIB, including over $1 million that was reprogrammed from the USMS Sex Offender Investigative Branch to the IIB, to ensure the IIB had sufficient funds to conduct all removal events. Additionally, prosecutorial and investigative components should be aware that, particularly in a flat or declining budget environment, increased spending on international fugitive removals could impact the availability of Department funding for other priorities.

While we recognize that costs should not be the sole determining factor in removal decisions, we believe the Department should establish a more fully informed decision-making process that includes, among many other factors, the potential costs of removal activities. We also believe that the Department should assess the practicality of implementing a process to begin to tracking and analyzing

case outcomes of international fugitives removed to the United States so that this information would be available when making future removal decisions. The enhanced removal decision-making process could then incorporate the removal event cost and outcome information as part of a comprehensive assessment of many factors that are already considered, such as the charge(s), potential sentence, and citizenship of the international fugitives. For such a process to work, the USMS will need to establish reliable cost-related information.[27] Based upon our discussions with ODAG, OIA, and USMS officials, we believe that the Department could consider establishing a working group to determine the best way to incorporate a more fully-informed decision-making process into the international fugitive removal activity process. Enhancing the process in this manner should ensure that the concerns of various stakeholders are considered and appropriately accounted for in the planning.

Alternative Funding of Removal Activities

Because the USMS has expressed concerns related to the costs of international fugitive removal activities and the impact it has on its other mission areas, we considered other funding sources that could potentially alleviate the funding burden placed on the USMS. We believe the Department should consider implementing a cost-sharing model, including at least partial state and local law enforcement agency reimbursements, to aid in funding international fugitive removals.

When a fugitive wanted on state or local charges is located abroad, the state or local prosecutor consults with the OIA to determine what actions can be taken to return the fugitive to the United States to face prosecution. OIA officials stated that unlike the federal government, the state and local agencies do not have the authority to execute the removal of an international fugitive located abroad. As a result, the USMS will conduct the removal of international fugitives wanted on state or local charges.[28] According to the U.S. Attorneys' Manual, the USMS directive on international fugitive investigations, and the provisional arrest warrant specify that state and local prosecutors are responsible for costs related to the removal of international fugitives.

Based upon our review of USMS data from FY 2010 through FY 2013, the USMS conducted the removal of 1,158 international fugitives wanted on state or local charges. This represented 37 percent of its total international fugitive removal workload during this timeframe. However, despite the USMS directive specifying that state and local prosecutors were responsible for removal costs, an IIB official told us that the IIB did not require state and local agencies to reimburse the USMS for any of the costs of these international fugitive removal events, nor does the USMS have a formal process to seek such reimbursement from these agencies. USMS Financial Services Division officials also stated that the USMS does not have

[27] Finding II contains our assessment of the USMS's cost data related to removal events.

[28] The USMS may also adopt certain state and local cases as a result of its relationship with the investigating entities.

an established method to receive reimbursements from state and local agencies for removal event costs, and that the USMS OGC would need to determine the legality of charging state and local agencies for such costs. Based upon our review of USMS financial documentation, we confirmed that the USMS did not receive any reimbursement from state and local law enforcement agencies during the period we reviewed.

According to the USMS's removal cost data, displayed in Exhibit 1-2, the total cost of removing international fugitives wanted on state or local charges during FY 2012 and FY 2013 was $797,568, or 23 percent of the USMS's total reported costs for those two fiscal years.[29] As mentioned previously, the USMS reprogrammed funds to the IIB to cover its budget shortfall in FY 2011 and FY 2012. If the USMS had been reimbursed for at least some of the costs of removing international fugitives wanted on state and local charges, it would not have had to reprogram as much money from other USMS mission-critical functions.

EXHIBIT 1-2
ANALYSIS OF FEDERAL AND STATE/LOCAL INTERNATIONAL FUGITIVE REMOVAL ACTIVITIES

	Fiscal Year	Number of Removal Activites	Total Removal Activities		Reported Cost of Removal	Total Reported Cost of Removal Activities	
Federal	2010	411	2014	63%	-	-	-
	2011	493			-	-	-
	2012	540			$1,471,903	$2,708,117	77%
	2013	570			$1,236,214		
State	2010	235	1158	37%	-	-	-
	2011	306			-	-	-
	2012	312			$514,918	$797,568	23%
	2013	305			$282,650		

Source: OIG analysis of USMS data

Many state and local agencies are experiencing similar budgetary shortfalls as the federal government. As a result, ODAG and OIA officials expressed concerns about asking state and local agencies to pay for the removal of international fugitives wanted on state or local charges. Nonetheless, the ODAG official we interviewed believed that the USMS should not necessarily be responsible for all international fugitive removal costs. This official believed that considering the implementation of a cost-sharing mechanism would not only relieve some of the financial burden from the USMS, but would also force others in the decision-making process, including federal, state and local prosecutors, to consider the cost of the

[29] IIB officials stated that the IIB started to separately track costs by individual removal event in FY 2012. As a result, the cost data provided for individual removal events only encompassed FY 2012 and FY 2013. In addition, Exhibit 1-2 does not reflect the cost of charter flights because during FY 2012 and FY 2013, the USMS did not use any charter flights to remove any international fugitives wanted on state or local charges.

removal events. This official cautioned that this cost-sharing mechanism should not impede the USMS's determination of how best to execute the removal event. We believe that the implementation of a cost-sharing model could ease part of the financial burden placed on the USMS for conducting international fugitive removals. In addition, we believe that the Department should assess the appropriateness and availability of non-component specific funding sources that could be used to help support international fugitive removal activities and incorporated into a cost-sharing model.

Conclusion

While we identified successful coordination among Department components regarding the operational aspects of removal activities, we identified a disconnect within the removal process between those approving the removal of international fugitives and those executing and funding the removal. The USMS is not involved in the removal decision, yet the USMS has primary responsibility for funding the removal event. Due to circumstances often outside of the USMS's control, including the use of chartered aircraft, some removal events may cost the USMS over $200,000. While costs should not be the sole determining factor in removal decisions, we believe that the Department should establish a more comprehensive, fully informed decision-making process so that additional factors, such as costs, can be appropriately considered by Department officials. Moreover, while OIA officials told us that potential case outcomes are considered when making individual removal decisions, we believe this process could be enhanced in light of our identification of 11 instances where international fugitives were returned to the United States and sentenced to "time served." Specifically, we believe the Department should assess the practicality of tracking and analyzing prior case outcome information for use in managing future removal activities. We also believe DOJ should consider developing a cost-sharing model among DOJ components and state and local agencies, including at least partial reimbursement from state and local agencies and the use of DOJ non-component specific funding sources to fund at least a portion of the removal costs.

Recommendations

We recommend that the ODAG:

1. Consider whether the Department should seek legislative change to address the significant costs of venue-specific international removals, such as those associated with the Controlled Substance Act.

2. Enhance the international fugitive removal activity decision-making process to ensure that the decision makers employ a comprehensive assessment of all relevant factors, including costs, and assess the practicality of implementing a process to begin tracking and analyzing the outcomes of removal cases for use in future removal decisions.

3. Examine the feasibility of developing an appropriate cost-sharing model among federal, state, and local agencies for funding international fugitive removals, including at least partial reimbursement from state and local agencies and the use of DOJ non-component specific funding sources to fund at least a portion of the removal costs.

II. USMS's Management of International Fugitive Removal Activities

Because the USMS has primary responsibility for executing and funding international fugitive removals, it is critical that the USMS maintain accurate, complete, and reliable cost data that can, in turn, be used to support the decision-making process. We reviewed the USMS's removal event data for completeness and accuracy, as well as examined the IIB's strategic use of its data. We found that the USMS does not maintain complete and accurate operational and financial information relating to its international fugitive removal events, and that the USMS does not strategically use the data it maintains. By appropriately recording and organizing data in a complete and accurate manner, the USMS could better assess the financial and operational impact of international fugitive removal events, and allow it to provide the Department with accurate removal cost information. We also assessed the USMS's management of international fugitive removal events and determined that the USMS does not have adequate internal controls to ensure that the USMS is conducting the removal of international fugitives in the most fiscally responsible manner possible.

USMS Removal Activity Data

In addition to the international fugitive investigative data that resides in the USMS's official case management system, the IIB maintains two separate datasets related to its international fugitive removal events. These datasets were developed as an internal initiative within the IIB to collect and maintain information relating to specific removal events because the IIB often receives requests for information relating to its international fugitive removal work. One dataset, which we refer to as the IIB's removal event spreadsheet, contains basic information related to the removal events conducted during a given fiscal year, including each fugitive's name, citizenship, and charge(s), as well as the location where the fugitive was apprehended and the district where the fugitive is to be prosecuted. In this dataset the USMS also assigns a unique number to each removal event. The other dataset, which we refer to as IIB's financial spreadsheet, is a spreadsheet that identifies costs associated with individual removals. The IIB's financial spreadsheet is organized by removal event number, and its purpose is to identify costs associated with travel, overtime, and other expenses incurred during the removal. However, the IIB's financial spreadsheet did not capture the cost of charter flights during our review period.

Data Accuracy and Completeness

We requested and obtained both datasets associated with our review period of FY 2010 through FY 2013.[30] We reviewed both datasets to determine the accuracy and completeness of the provided information. Based upon this review, we concluded that the IIB was not adequately managing its data. For example, we found that not all of the data fields were completed within the IIB's removal event spreadsheet. We also identified errors in the IIB's removal event spreadsheet, such as instances where the removal dates preceded the dates when the USMS was notified of the removal, and instances where the IIB did not consistently enter the charges against the international fugitives. Moreover, we identified an instance in which the USMS misclassified the type of removal activity as an international fugitive removal, when it was actually a removal of a foreign fugitive from the United States to Mexico. Further, although the USMS removed 852 international fugitives to the United States during FY 2012, IIB's financial spreadsheet only reflected costs for 49 percent of the removals.

We informed IIB officials about our concerns. In response, the IIB officials stated that the IIB's removal event spreadsheet does not contain standardized drop-down values for the fields; instead users are able to enter any text into the various fields. These officials further told us that some international removal events do not have any costs associated with them and that this might explain the lack of information in the financial spreadsheet. However, it seemed unusual that such a significant number of the removal events would not have any associated costs so we reviewed the information further. Based upon our review of the IIB's datasets, we identified instances where the details of the removal event strongly suggested that the USMS would have incurred costs. For example, in FY 2013 the USMS was involved in a removal of an international fugitive from the Philippines. Although this removal event involved an international fugitive who was located in a distant country, the IIB's financial spreadsheet stated that the USMS did not incur any travel-related or overtime costs on this removal event.

To further examine the IIB's available financial data, we reviewed 64 removal events to identify the costs associated with these events.[31] This review confirmed that the IIB's financial spreadsheet did not reflect all costs incurred while conducting these 64 removal events. We identified 43 instances where the costs recorded in the IIB's financial spreadsheet did not match the supporting documentation provided by the IIB. For example, in FY 2012 the USMS conducted a removal from India, and the financial spreadsheet indicates costs of $14,801 associated with this removal event while the documentation we received from the IIB to support this removal event's costs totaled $7,813. In addition, in FY 2012 an international fugitive was removed from Jordan, and this removal was reported on the IIB's financial spreadsheet with a total cost of $27,963. However, the USMS

[30] IIB officials stated that the IIB started to separately track costs by individual removal events in FY 2012. As a result, the cost data provided for individual removal events only encompassed FY 2012 and FY 2013.

[31] Details about these removal activities are discussed in Appendix 2.

only provided us with documentation to support $10,533 of the costs incurred. In contrast, we found eight removal events for which the IIB provided documentation supporting costs ranging from $2,244 to $4,432, even though the IIB's financial spreadsheet reported that no costs had been incurred on these removals.

We obtained an expenditure report from the USMS's official accounting system and compared the total costs from this report to the total costs reflected in IIB's financial spreadsheet. According to the provided report from the USMS's official accounting system, the USMS spent $5.31 million to conduct removal events in FY 2013, while the IIB's financial spreadsheet along with the cost of charter flights reflected only $3.81 million in removal event costs for FY 2013, meaning that the IIB's financial spreadsheet did not include $1.5 million in removal event costs that were reflected in the USMS's official accounting system.[32] This overall difference coupled with the previously mentioned examples of variances in individual removal event costs illustrates the incompleteness and inaccuracy of the IIB's financial spreadsheet.[33]

We believe the USMS needs to ensure that it maintains complete and accurate data associated with all removal events for its own strategic use, as well as to provide reliable information to the Department for use in the removal activity decision-making process.

Strategic Use of Data

We are also concerned that the IIB makes only limited use of the information it maintains. We found that the IIB does not use the data to strategically assess or manage its operations. IIB officials told us that the data within its datasets is used for responding to inquiries from USMS senior management, DOJ, or external parties such as Congress. The IIB officials also told us that every removal event is different and, therefore, attempting to manage the IIB's operations based upon historical data would not necessarily be helpful to them in managing the costs associated with specific removal events. While we understand the potential for unique circumstances on each removal event, we believe the IIB can improve the management of its program by conducting routine analyses of data on removal events and costs. Moreover, in light of the USMS's concern with the escalating cost of removal events, we believe that it is critical for the USMS to be able to support its assertions and assurances that it is being fiscally responsible during the completion of the removal events.

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[32] As mentioned in the Introduction, the USMS does not distinguish between international fugitive removal events and foreign fugitive removal events in its official accounting system. Therefore, the costs reflected in this paragraph include all removal costs (both international fugitives and foreign fugitives).

[33] Despite the significant concerns we have with the reliability of the IIB's data, we refer to cost figures from this spreadsheet in our report because it is the only data available that provides cost information for individual removal events.

During our review of the IIB's datasets, we identified instances where USMS personnel were conducting removals that appeared similar yet the costs of the removals were significantly different. For example, in May 2012 USMS personnel from the Central District of California traveled to Canada to remove a fugitive who was wanted on fraud charges. According to the IIB's records, the trip spanned 3 days, and the costs incurred on this removal were approximately $4,300. In September 2012, USMS personnel from the Central District of California again spent 3 days to travel to Canada to remove a fugitive who was also wanted on fraud charges. Although these removals were clearly similar (e.g., the length of the trip, the originating USMS district, the number of fugitives removed), the September 2012 removal cost approximately $10,500 – over $6,000 more than the similar removal conducted only 4 months earlier. According to an IIB official, the IIB was not given sufficient lead time to secure travel plans to conduct the September 2012 removal, and this removal required enhanced security. However, there was no documentation in the IIB's records to substantiate the circumstances or to indicate that this information was provided to IIB senior management for approval prior to the removal.

While we acknowledge that circumstances may dictate higher costs for some removal events than for others, we believe the IIB can improve the management of its program by accurately documenting the details of its historical removal activities (including costs), and then using its data to identify removal events with unusually high costs and assessing the reasons for the variances. By routinely performing this type of analysis, the IIB can ensure that the variables contributing to the cost variances are appropriate, and it can better identify ways to improve the cost effectiveness of removal events.

We further believe that the IIB could strategically use its data to assess the costs of "959" or other venue-specific removal events. As previously discussed, IIB officials stated that "959" removals often require the use of charter flights, which are more costly than commercial airfare. However, the data maintained by the IIB did not specifically identify or track international fugitives removed for "959" charges. Thus, the IIB could not determine the distinct burden these costly removals placed on the USMS during our review period. According to IIB officials, the IIB started tracking this information in FY 2014. We believe that by tracking "959"-specific information, the IIB can better quantify the financial burden these removals place on the USMS.

USMS Data Management Enhancements

In order for the USMS to correctly report to the Department the costs associated with international fugitive removal events, the USMS needs to maintain accurate, complete, and reliable data. Without this data, the USMS cannot strategically plan its budget, nor can it provide relevant cost information to be considered as part of the more fully informed decision-making process recommended in Finding I.

Investigative Operations Division officials acknowledged the concerns we identified with the IIB's data. They stated that in an effort to improve the quality of the data maintained by the IIB, the USMS has prioritized the development of a new system to assist the IIB with its information management. We met with an official from the USMS's Information Technology Division who told us that as of April 2014, discussions between IIB and the Information Technology Division were in the very early stages. Currently, these stakeholders are drafting a process plan (a description of the business problem) that will guide the USMS in determining if a new data management system should be developed or if instead the solution lies in revamping the IIB's business or management processes. We appreciate that the USMS recognizes the need for accurate and complete operational and financial removal event data, and we recommend that the USMS implement a solution to maintain reliable international fugitive removal data, including cost information.

Cost Effectiveness and Efficiency of Removal Events

According to Office of Management and Budget (OMB) Circular A-123, federal managers are responsible for establishing and maintaining internal controls to achieve the objectives of effective and efficient operations and reliable financial reporting. Therefore, we assessed the IIB's management of international fugitive removal events to ensure sufficient controls exist in the planning and completion of removals. According to IIB officials, the IIB plans each removal event after being notified that an international fugitive needs to be removed to the United States. As part of the planning process, the IIB coordinates with USMS district offices to determine the number of deputies who will conduct the removal event; the mode of transportation; the dates of travel; and specific travel itinerary details, such as the common carrier to use, lodging, and additional expenses that may be incurred.

To evaluate the IIB's actions in conducting international fugitive removal events, we interviewed Investigative Operations Division and IIB officials regarding the policies and guidelines established for planning and conducting international fugitive removal events. In addition, based on case information provided by the USMS, we conducted an in-depth review of 64 cases to evaluate the IIB's adherence to its policies and procedures. We also analyzed these cases to determine if the IIB's actions in these removal events were completed in a cost effective manner.[34] In selecting these cases, we considered several attributes of the removal events, including the type of removal (extradition, deportation, or MLAT), use of a charter flight, removal location, criminal charge, and overall removal cost identified by the USMS. Appendix 2 summarizes the 64 cases reviewed.

USMS Personnel Assigned

IIB officials told us that the USMS uses an informal standard of practice for determining the number of deputies to transport fugitives. When the IIB notifies

[34] IIB officials stated that the USMS did not begin tracking costs related to individual removal events until FY 2012. Therefore, we limited our selection to removal events completed during FY 2012 and 2013.

district offices of a removal event, the IIB informs the district of the number of deputies that will be needed to conduct the removal. IIB officials stated that under certain circumstances, such as when a removal involves a fugitive with a violent nature or an unusually long trip, additional deputies are needed to transport the fugitive to the United States. These officials stated that the use of additional deputies requires approval by the IIB.

Based upon our review of the 64 removal events, we found 8 instances where fewer than the standard number of deputies participated on a removal and none of these removals included an explanation for the difference. We also found 13 instances where more than the standard number of deputies participated on the removal, and that only 3 of these 13 removals included a justification explaining the need for additional deputies. The documentation associated with the remaining 10 removals did not include any justification. Sending more than the standard number of deputies on a removal event will generally result in additional costs to the IIB, as well as place an additional strain on district resources. To ensure that the USMS is conducting the removal event in the most cost effective and secure manner, we believe the IIB should establish a written procedure for determining the baseline number of deputies needed to conduct international fugitive removals, as well as an approval process to justify instances when the circumstances dictate that the USMS not comply with this newly established procedure.

Travel Time

We also reviewed the length of time spent on each removal event. The USMS does not have a policy on the time required to conduct a removal event because, as noted by IIB officials, each removal event is different. These officials told us that the length of each removal event can vary based on mission requirements, such as meetings at the embassy or procuring travel and court documentation, as well as the location of the international fugitive. An IIB official said that when coordinating the details of a removal event with the district that will conduct the removal, the IIB provides district personnel with guidance on travel itineraries and then the district offices book their own travel arrangements. While an IIB financial analyst reviews travel authorizations for completeness, this analyst may not know the operational details of the removal, and thus may not be able to assess whether the district's planned itinerary is consistent with the operational needs of the removal and the guidance provided by IIB operational staff. During our review of the 64 removal events, we found various instances where the length of trip seemed longer than a practical amount of time, and for which the IIB removal file did not provide justification for the extended length of the trips.

Given that district personnel are responsible for determining their own travel itineraries and the IIB travel authorization review does not include ensuring that the travel itinerary is operationally appropriate, and given that our file review identified trips that lacked any justification for apparently extended itineraries, we believe the IIB should take additional steps to verify that deputies are not spending more than a reasonable amount of time to conduct removal events. Including in the IIB's review of the travel authorization an assessment of the appropriateness of

the travel itinerary would allow the IIB to better ensure that removal events are conducted in a timely and, therefore, cost-effective manner.

Use of Overtime

In addition to assessing the number of deputies who participate on a removal event and the length of time spent to remove a fugitive, we examined overtime incurred while conducting removal events.[35] The IIB stated that there are circumstances that would require deputies to incur overtime, such as a long flight, and that this overtime is paid from the IIB's budget. In these instances, the IIB authorizes the use of overtime prior to the removal event. After overtime is incurred, the deputies record the number of overtime hours worked and the removal project code associated with the overtime hours in the USMS's time and attendance system. The deputies' supervisors (who are located in the district offices, not IIB) approve the actual overtime hours as part of the USMS's time and attendance and payroll certification process. Although these overtime costs are paid from the IIB's removal budget, the IIB does not review or reconcile the actual number of overtime hours incurred by deputies on individual removal events.

In FY 2013, the USMS's financial records indicated that IIB spent $397,013 for removal-related overtime. Based on the 64 removal events reviewed, deputies incurred overtime on 70 percent of these removal events. According to IIB officials, there is no way to verify overtime at their level because overtime is approved through the time and attendance approval process within district offices. While we understand that overtime is sometimes necessary when conducting removal events and overtime charges are reviewed by district office supervisors, we believe that the IIB needs to develop a process where it can review summary overtime costs charged by USMS district offices to ensure the total overtime hours charged were reasonable and associated with deputies conducting international fugitive removal events.

Charter Flights

In Finding I, we discussed the use of charter flights to remove international fugitives, including the significant financial burden that using charter flights places on the USMS. Charter flights may be required, for example, to remove fugitives wanted on venue-specific charges, or for security or medical reasons. IIB officials told us that the IIB Chief or Deputy Chief must approve the use of a charter flight.

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[35] Our audit did not assess whether the deputies worked their Law Enforcement Availability Pay (LEAP) hours before claiming overtime. However, the OIG identified that issue in a prior audit. U.S. Department of Justice Office of the Inspector General, *Audit of the Financial Management of the USMS's Office in the Superior Court of the District of Columbia*, Audit Report 13-24, (June 2013). As part of its efforts to ensure the cost-effectiveness of removal events, we encourage the USMS to ensure that its deputies work as many LEAP hours as possible before claiming overtime in association with the execution of removal events.

Among the 64 removal cases reviewed, the USMS used 17 charter flights for the completion of 21 removal events.[36] In 10 of these 17 instances where charter flights were used, the USMS transported fugitives from Colombia to the United States. According to an IIB official, all removals from Colombia require the use of a charter flight because of local security concerns, and because many of the international fugitives removed from Colombia are wanted on venue-specific charges.[37] While the USMS provided credible explanations for the use of charter flights for the remaining seven instances, there was no documentation in the IIB's records to substantiate the circumstances or to indicate that this information was provided to IIB senior management for approval prior to the removal.

Considering the often significant costs of using charter flights, we believe that the IIB should require its staff to develop a written justification for the use of charter aircraft for international fugitive removals, and that IIB management should ensure that the justification is appropriate prior to approval.

Conclusion

We found that the USMS does not maintain complete and accurate removal event data, including removal cost information, and that the USMS does not strategically use the removal data it maintains. Moreover, our review of removal events revealed weaknesses in the IIB's management of removal events. Specifically, we found that the IIB does not require specific written justification for using more than the standard number of deputies or for the use of charter aircraft. We also found that the IIB does not have controls in place to ensure travel itineraries, and particularly the length of itineraries, are reviewed for reasonableness in light of operational needs. Finally, although overtime is an anticipated expense on many removal events, IIB officials do not review the actual overtime hours charged against the international fugitive removal budget and thus do not ensure that the IIB is only paying for allowable and reasonable overtime costs associated with actual removal events. By enhancing management controls, the IIB can better account for the costs associated with specific removal events and improve its use of taxpayer dollars.

Recommendations

We recommend that the USMS:

4. Establish a mechanism for accurately and completely tracking its international fugitive removal activities, including all costs associated with those removals and whether the removals involved venue-specific charges.

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[36] The USMS completed five removal events from Israel using one charter flight.

[37] When available, the USMS uses DEA aircraft to remove international fugitives from Colombia.

5. Review historical removal events to establish norms for executing removals based upon various factors, including the location of the fugitive and the charge against the fugitive, and develop a process to routinely analyze removal events to identify and assess deviations from the established norms.

6. Establish written procedures for determining the baseline number of deputies needed to conduct international fugitive removals, and ensure that a reasonable justification is documented and approved for any removals conducted with more than the standard number of deputies.

7. Establish a mechanism for evaluating whether travel itineraries associated with international fugitive removal events are operationally appropriate.

8. Establish a mechanism for the IIB to routinely review the overtime costs charged to the international fugitive removal project code and ensure that the overtime costs are appropriate and reasonable.

9. Establish written procedures requiring the IIB to document the justification for using a charter aircraft for international fugitive removals, and that the decision is approved at an appropriate level of authority.

STATEMENT ON INTERNAL CONTROLS

As required by the *Generally Accepted Government Auditing Standards (GAGAS)*, we tested, as appropriate, internal controls significant within the context of our audit objectives. A deficiency in an internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to timely prevent or detect: (1) impairments to the effectiveness and efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations. Our evaluation of DOJ's, including the USMS's, internal controls was *not* made for the purpose of providing assurance on its internal control structure as a whole. DOJ and USMS management are responsible for the establishment and maintenance of internal controls.

As noted in the Findings and Recommendations section of this report, we identified deficiencies in DOJ's and the USMS's internal controls that are significant within the context of the audit objectives and, based upon the audit work performed, that we believe adversely affect the DOJ's international removal decision-making process and the USMS's ability to ensure the execution of international fugitive removal activities are completed in the most cost effective manner.

Because we are not expressing an opinion on DOJ's or the USMS's internal control structure as a whole, this statement is intended solely for the information and use of the Department and the USMS. This restriction is not intended to limit the distribution of this report, which is a matter of public record.

STATEMENT ON COMPLIANCE WITH LAWS AND REGULATIONS

As required by the GAGAS we tested, as appropriate given our audit scope and objectives, selected transactions, records, procedures, and practices, to obtain reasonable assurance that DOJ, including USMS, management complied with federal laws and regulations, for which noncompliance, in our judgment, could have a material effect on the results of our audit. DOJ management is responsible for ensuring compliance with applicable federal laws and regulations. In planning our audit, we identified the following laws and regulations that concerned the operations of the auditees and that were significant within the context of the audit objectives:

- 28 U.S.C. § 566(c) (2008)
- 18 U.S.C. §§ 3181-3196 (2011)[38]
- 28 C.F.R. 0.111(a)(b) (2008)
- OMB Circular No. A-123

Our audit included examining, on a test basis, DOJ's compliance with the aforementioned laws and regulations that could have a material effect on the DOJ's, including the USMS's, operations, through interviewing Department personnel, analyzing USMS data, assessing internal control procedures, and examining procedural practices.

Throughout the course of this audit, nothing came to our attention that caused us to believe that the USMS did not comply with the aforementioned laws and regulations. Regarding the USMS's responsibilities under OMB Circular No. A-123, we identified certain weaknesses in operational controls related to its international removal events and specific financial data. This is discussed in Finding II.

[38] These sections of the U.S. Code cover extradition proceedings. Section 3195 covers the payment of fees and costs incurred in an extradition proceeding. OIA officials stated that the OIA does not interpret this particular section to mean that state and local law enforcement agencies are required to fund the removal of international fugitives who are wanted on state charges. Instead, these officials stated that the existing treaties between the United States and foreign countries are relied upon instead of the statute in defining the roles and reimbursement of costs.

OBJECTIVES, SCOPE, AND METHODOLOGY

Objectives

The objectives of this audit were to evaluate: (1) the Department's oversight of international fugitive removal activities, including its role in the removal decision-making process; and (2) the USMS's management of removal-related activities associated with international fugitives, including coordination with federal, state, and local law enforcement entities; strategic data management; and the efficiency of removal-related activities, including the cost effectiveness of these processes.

Scope and Methodology

We conducted this performance audit 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 on our audit objectives.

To accomplish the audit objectives, we reviewed: (1) various DOJ policies and procedures related to international fugitive removal activities, including the United States Attorneys' Manual; and (2) USMS directives and procedures associated with the coordination on and completion of removal events. We also interviewed 23 USMS headquarters officials from the USMS's Investigative Operations Division, Financial Services Division, and Information Technology Division, as well as USMS deputies in the Northern District of Illinois, the Northern District of Indiana, the Northern District of Texas, the Eastern District of Virginia, the District of Columbia Superior Court, and the District Court of the District of Columbia. These interviews with USMS personnel provided us with insight into the USMS's management of removal events, including the costs associated with the removals, and the USMS's coordination efforts with other federal, state, and local agencies. We also interviewed officials from the Office of the Deputy Attorney General, as well as other DOJ components and non-DOJ agencies (as shown in the following table) to understand each agency's involvement in the removal activity process.

NON-USMS INTERVIEWS CONDUCTED	
DOJ Components	**Non-DOJ Agencies**

• Bureau of Alcohol, Tobacco, Firearms & Explosives
• Drug Enforcement Administration
• Executive Office for Organized Crime Drug Enforcement Task Forces
• Federal Bureau of Investigation
• INTERPOL Washington
• Justice Management Division
• Office of International Affairs
• Office of Immigration and Litigation
• United States Attorneys' Offices
  o Northern District of Illinois
  o Eastern District of Virginia
  o District of Columbia
	• Department of Homeland Security, Immigration and Customs Enforcement
	• Department of State
	• United States Postal Inspection Service
	• South Bend, Indiana, Police Department
	• St. Joseph's County, Indiana, Prosecutor's Office
	• Dallas, Texas, Police Department

Data Analysis

To assist in accomplishing our audit objectives, we obtained and analyzed international fugitive removal data. Specifically, we examined the IIB's removal event spreadsheet and financial spreadsheet, as well as additional documentation provided by the IIB on the cost of charter flights, overtime, and travel. We used this data to identify the IIB's international fugitive removal workload and the costs associated with its workload. We analyzed the data to assist in assessing the IIB's internal controls over managing removal events, as well as to aid in our research of the outcomes of international fugitive cases. For purposes of this audit, we focused on the removal of international fugitives wanted on federal, state, or local charges and that were completed during FY 2010 through FY 2013.

We also obtained data from the USMS's official financial management system regarding the costs charged to the USMS's project code for international fugitive removal events. We analyzed this data to determine the overall costs incurred by the USMS on this mission activity.

Data Reliability

The Justice Detainee Information System (JDIS) is the USMS's official information system associated with its operational mission activities, including fugitive investigations. However, according to IIB officials, JDIS does not provide easily accessible information related to the USMS's international fugitive removal events. The USMS would have to look at an individual fugitive investigation record to determine if that particular case involved the removal of an international fugitive to the United States. Moreover, JDIS does not contain any data associated with the costs of individual removal events. As a result, we did not use data from this official information system and therefore did not assess the reliability of this information system. In addition, the USMS's official financial management system does not track costs by individual removal event; all costs incurred on removal events are coded to the USMS's removal project code. Although we used

information from the USMS's official financial management system to identify the total costs incurred during the completion of removal events, we did not deem it necessary to assess the reliability of this system during the conduct of this audit. The USMS's financial statements, generated in part from this system, are evaluated during the annual financial statement audit of the USMS.

We did utilize internal datasets related to the USMS's removal workload, including costs, maintained by the IIB. The IIB maintains two separate datasets – one containing basic information related to the removal events conducted during a given fiscal year (referred to as the IIB's removal event spreadsheet) and the other containing costs associated with individual removals (referred to as IIB's financial spreadsheet). However, the IIB's financial spreadsheet does not capture the cost of charter flights, which is tracked separately by the IIB. Because these datasets contained the information needed to accomplish our audit objectives, we reviewed the datasets for accuracy and completeness. To assess the reliability of these datasets, we not only reviewed the data for any inconsistent or illogical data entries, but we also compared the contents of these datasets to other case-related and cost-related documentation provided by the USMS. We identified several concerns with each dataset during our assessment. In our review of these spreadsheets, we found that the individuals responsible for these spreadsheets do not run exception checks to ensure the accuracy of the information captured. Further, we determined that data fields in both spreadsheets are free text forms – meaning that there are no restrictions or requirements as to what is input into the fields. Additionally, there were no limitations to prevent any users from inadvertently editing any previously entered information. As with most data, the reliability of the USMS's data is also inherently affected by the integrity and care of those who initially input the data into the originating systems.

Based upon our review of the data, we have concerns regarding the reliability of the IIB's data and cannot determine with certainty the number of actual removal events completed by the USMS or the actual costs of individual removal events. However, this is the only data available that reflects the USMS's removal event workload, including costs for individual removal events. Therefore, we used the data maintained by the IIB throughout the audit because we believe it provides a general idea of the IIB's removal event workload and associated costs. Further, our conclusions are not based solely on this data. We recommend in the report that the USMS maintain reliable data that will better enable IIB management to more strategically analyze the data and enhance its management of removal events.

Internal Controls Testing

To test the IIB's internal controls of international fugitive removal events, we judgmentally selected 70 of the 1,457 international fugitive removals completed during FY 2012 and FY 2013. We employed a judgmental sampling design to obtain broad exposure to numerous facets of the removal events. Specifically, we ensured that we selected removals completed as an extradition, deportation, or MLAT (the USMS did not execute any expulsion-related removals in FY 2012 or FY 2013); removal events involving the use of charter aircraft; the removal of international

fugitives wanted on a variety of charges; removals from various locations; and removals that reflected a wide range of overall costs.[39] This non-statistical sample design does not allow a projection of the test results to all international fugitive removals during this time period.

After identifying our sample, we requested documentation from the IIB to support the operational and financial aspects of the removal events. The IIB informed us that one of the removal events was never conducted, and that it did not have documentation for two other removal events. Additionally, upon initial review of the remaining 67 events, we determined that 3 of these events actually involved the removal of foreign fugitives from the United States. Therefore, we reviewed the documentation for the remaining 64 removal events to understand the circumstances surrounding each removal event, including the costs associated with each removal event. Based upon the documentation provided, we focused on certain cost-driving factors to determine if the USMS conducted the removals in the most cost-effective manner and whether the IIB documented reasonable justification for factors deemed to be outside the norm. Specifically, we evaluated the number of deputies assigned to conduct the removals, the justification for using charter flights, the number of days to complete the removal in conjunction with the location of the fugitive, and overtime and other travel-related expenses incurred by the deputies.

Outcome Analysis

To review the sentencing outcomes of the fugitives removed to the United States, from the population of 1,727 international fugitives removed to the United States in FY 2012 and FY 2013, we selected a judgmental sample of 383 international fugitives removed to the United States. Specifically, we selected:

- All removal events for which the international fugitives were wanted on federal charges and had a reported removal cost greater than $10,000;
- All removal events for which the international fugitives were wanted on state and local charges; and
- All removal events for which the USMS used a charter flight to transport an international fugitive.

After identifying our sample, we researched the outcomes of the international fugitives' federal cases using the U.S. Courts' Public Access to Court Electronic Records (PACER) system. Through the PACER system, we were able to review the applicable judgment, sentencing, and plea agreement documents associated with each fugitive's case. We used this information to confirm the charge(s) against the

[39] During our analysis of the USMS data, we looked at the charges against the international fugitives. Specifically, we categorized the charges into three areas: (1) violent, (2) non-violent, and (3) narcotics. We based this categorization on a discussion with an Assistant United States Attorney, in which this official recommended that we condense the removal categories into these three areas.

fugitive and what sentence a fugitive received (if the fugitive was found guilty and the sentencing had occurred). For those international fugitives wanted on state or local charges, we used state inmate locator websites and the National Criminal Information Center to determine sentencing information.

OIG REVIEW OF INTERNATIONAL REMOVAL EVENTS

Number	FISCAL YEAR	EXT#	ENTITY		TYPE OF REQUEST			NUMBER OF PERSONS REMOVED	CHARGE			LOCATION	WANTED BY	REPORTED COST	TRAVEL TYPE		
			Federal	State	Extradition	Deportation	M L A T		Violent	Non - Violent	Narcotics				Commercial	Charter	No Flight
1	2012	EXT00092	x		x			1		x		ISRAEL	54 - S/NY	$ 57,778		x	
2	2012	EXT00108	x		x			1			x	ISRAEL	71 - D/SC	$ 57,778		x	
3	2012	EXT00129	x		x			2			x	COLOMBIA	54 - S/NY	$ 132,911		x	
4	2012	EXT00147	x			x		1	x			DOMINICAN REPUBLIC	54 - S/NY	$ -			x
5	2012	EXT00149	x		x			1	x			DOMINICAN REPUBLIC	54 - S/NY	$ 3,293	x		
6	2012	EXT00151	x		x			1		x		ISRAEL	54 - S/NY	$ 57,778		x	
7	2012	EXT00152	x		x			1		x		ISRAEL	54 - S/NY	$ 57,778		x	
8	2012	EXT00153	x		x			1		x		ISRAEL	54 - S/NY	$ 57,778		x	
9	2012	EXT00161		x		x		1	x			COSTA RICA	TRENTON, NJ	$ -			x
10	2012	EXT00209	x				x	3		N/A		RWANDA	49 - D/NH	$ 280,667		x	
11	2012	EXT00277	x		x			4		x		UNITED KINGDOM	54 - S/NY	$ 32,900	x		
12	2012	EXT00358	x		x			1		x		UNITED KINGDOM	54 - S/NY	$ 18,846	x		
13	2012	EXT00413	x		x			11			x	COLOMBIA	04 - S/FL	$ 97,363		x	
14	2012	EXT00475	x		x			1		x		CANADA	12 - C/CA	$ 4,292	x		
15	2012	EXT00506	x				x	3		N/A		US, NH	RWANDA	$ 237,890		x	
16	2012	EXT00517	x		x			1		x		COSTA RICA	62 - N/OK	$ 78,559		x	
17	2012	EXT00602	x		x			1			x	SCOTLAND	08 - D/AZ	$ 133,231		x	
18	2012	EXT00604		x		x		1	x			MEXICO	DALLAS, TX	$ -			x
19	2012	EXT00808	x		x			1		x		CANADA	12 - C/CA	$ 10,554	x		
20	2012	EXT00067	x		x			4			x	GHANA	83 - E/VA	$ 239,291		x	
21	2012	EXT00243	x		x			1		x		ISRAEL	54 - S/NY	$ 11,438	x		
22	2012	EXT00546	x		x			1			x	JAMAICA	41 - D/MN	$ 49,383		x	
23	2012	EXT00571	x		x			1	x			GERMANY	16 - DC/DC	$ 19,946	x		
24	2012	EXT00598	x		x			1	x			THAILAND	83 - E/VA	$ 14,584	x		
25	2013	EXT00023	x		x			1		x		LATVIA	50 - D/NJ	$ 18,567	x		
26	2013	EXT00119	x		x			1		x		FINLAND	55 - W/NY	$ 11,754	x		
27	2013	EXT00279	x		x			1			x	MEXICO	11 - N/CA	$ -	x		
28	2013	EXT00334	x		x			1			x	MEXICO	67 - M/PA	$ -	x		
29	2013	EXT00014	x		x			15			x	COLOMBIA	04 - S/FL	$ 126,528		x	
30	2013	EXT00069	x		x			12			x	COLOMBIA	04 - S/FL	$ -			x
31	2013	EXT00071	x		x			2			x	COLOMBIA	16 - DC/DC	$ 3,504	x		
32	2013	EXT00251	x		x			4			x	COLOMBIA	04 - S/FL	$ -			x
33	2013	EXT00329	x		x			1			x	COLOMBIA	38 - D/MA	$ 69,909		x	
34	2012	EXT00368		x		x		1			x	PANAMA	ATLANTA, GA	$ 1,650			x
35	2012	EXT00486	x		x			2			x	DOMINICAN REPUBLIC	53 - E/NY	$ 3,569			x
36	2012	EXT00647	x		x			1		x		CANADA	79 - S/TX	$ 3,189	x		
37	2012	EXT00178	x		x			1		x		ROMANIA	14 - D/CT	$ 36,866	x		
38	2012	EXT00487	x		x			1	x			BULGARIA	98 - S/CA	$ 35,064	x		
39	2012	EXT00173	x		x			1	x			SOUTH AFRICA	86 - W/WA	$ 24,280	x		
40	2012	EXT00419	x		x			2		x		ISRAEL	54 - S/NY	$ 22,540	x		
41	2013	EXT00057		x		x		1	x			HONDURAS	HOUSTON, TX	$ 2,216	x		
42	2013	EXT00339	x		x			1			x	CANADA	54 - S/NY	$ 4,317	x		
43	2012	EXT00169		x		x		1	x			CAMBODIA	VANCOUVER, WA	$ -			x
44	2012	EXT00724	x			x		1			x	PERU	04 - S/FL	$ -			x
45	2013	EXT00296	x			x		1	x			MEXICO	98 - S/CA	$ 7,744			x
46	2013	EXT00296	x		x			1		x		POLAND	39 - E/MI	$ -	x		
47	2013	EXT00371	x			x		1	x			FRANCE	19 - N/GA	$ -			x
48	2012	EXT00310	x		x			3			x	COLOMBIA	54 - S/NY	$ 81,790		x	
49	2012	EXT00416	x		x			2			x	COLOMBIA	38 - D/MA	$ 83,069		x	
50	2012	EXT00499	x		x			1			x	COLOMBIA	83 - E/VA	$ 86,511		x	
51	2012	EXT00574	x		x			1		x		COLOMBIA	19 - N/GA	$ 56,861		x	
52	2012	EXT00671	x		x			10			x	COLOMBIA	04 - S/FL	$ 120,523		x	
53	2012	EXT00763	x		x			2			x	COLOMBIA	54 - S/NY	$ 68,804		x	
54	2012	EXT00424		x		x		1	x			YEMEN	PHILADELPHIA, PA	$ 27,963	x		
55	2012	EXT00221		x	x			1	x			HONG KONG	54 - S/NY	$ 22,864	x		
56	2012	EXT00795		x	x			1			x	AFGHANISTAN	NEW ORLEANS, LA	$ 22,121	x		
57	2012	EXT00716		x	x			1	x			SIERRA LEONE	SOUTH BEND, IN	$ 20,940	x		
58	2012	EXT00172		x	x			1	x			SOUTH AFRICA	DARE COUNTY, NC	$ 19,884	x		
59	2012	EXT00616		x	x			1	x			NETHERLANDS	MANHATTAN, NY	$ 18,167	x		
60	2012	EXT00126		x	x			1	x			BRAZIL	HOUSTON, TX	$ 15,866	x		
61	2012	EXT00110		x		x		1	x			SENEGAL	PENSACOLA, FL	$ 15,439	x		
62	2012	EXT00099		x	x			1			x	INDIA	DALLAS, TX	$ 14,801	x		
63	2012	EXT00653		x	x			1	x			UNITED KINGDOM	BALTIMORE, MD	$ 11,934	x		
64	2012	EXT00634		x	x			1	x			GERMANY	TUCSON, AZ	$ 10,530	x		
TOTAL			**48**	**16**	**51**	**11**	**2**	**129**	**21**	**17**	**24**			**$2,723,802**	**32**	**21**	**11**

Source: OIG analysis of USMS information

OFFICE OF THE DEPUTY ATTORNEY GENERAL RESPONSE TO THE DRAFT REPORT

U. S. Department of Justice

Office of the Deputy Attorney General

Associate Deputy Attorney General

Washington, D.C. 20530

MEMORANDUM

TO: Carol S. Taraszka
Regional Audit Manager
Office of the Inspector General

FROM: Armando O. Bonilla
Associate Deputy Attorney General
Office of the Deputy Attorney General

SUBJECT: Response to the ODAG Recommendations Contained in the *Audit of the Department of Justice's Management of International Fugitive Removal Activities*

DATE: September 24, 2014

We appreciate the audit undertaken by the Department of Justice (Department) Office of the Inspector General (OIG) entitled *Audit of the Department of Justice's Management of International Fugitive Removal Activities*. Thank you for the opportunity to respond to this report. The OIG report contains three recommendations to the Office of the Deputy Attorney General (ODAG) and six additional recommendations to the United States Marshal Service (USMS). We agree with the three recommendations to ODAG, and concur in the response provided by the USMS on September 9, 2014, although we note here additional points that deserve further emphasis.

Background on the Department's International Removal Activities

Since the late 1990s, and across three Administrations, the Department has worked to establish an aggressive and effective program for the extradition of offenders from abroad. Extradition, as well as the other removal activities detailed in the report, has become an important tool in fighting the growing threats posed to the United States and its citizens by foreign-based terrorists, cybercriminals, and organized criminal groups and in holding accountable those who seek to escape justice by fleeing the United States. We must do this not only to vindicate individual cases, but also to send a strong signal to those who would violate our laws and seek impunity across international boundaries – that the United States can and will make the effort and expend the resources necessary to see them stand trial in the United States.

Due to the globalization of crime and the ease of international travel, the Department has seen a significant increase in demand for international removal services. The records of the Office of International Affairs (OIA) indicate that in FY 2000, approximately 230 federal and state fugitives were extradited to the United States from abroad. A decade later, the figure was over 500; and in FY 2013 it reached approximately 530.[1]

International extraditions can be resource intensive and, in some cases, can take years from the date extradition is sought until a fugitive's surrender to the United States. They often involve significant investigative work by the USMS and other law enforcement agencies to locate the fugitive and coordinate their arrest with foreign authorities. These cases also involve significant time and effort by prosecutors and OIA attorneys, often including writing voluminous legal documentation addressing complex issues of treaty and comparative law, to substantiate the case as it moves through the foreign legal system. In addition, international extraditions pose other costs including translation fees that may run in the thousands or tens of thousands of dollars and, finally, the costs of assuring the prompt, safe, and secure transportation of the fugitive back to the United States, which are the focus of the OIG Report.

The costs associated with international extraditions are not borne by the United States alone. Indeed, the foreign country from which we seek extradition may incur significant investigative, prosecutorial, and judicial expenses in effectuating our extradition request. Therefore, when we seek extradition and a foreign country arrests a fugitive on our behalf, we are effectively making a commitment to the foreign country that we will follow through with the extradition, including taking custody of the fugitive and returning them to the United States. If, on the eve of a fugitive's surrender, we abandoned the case due to costs, it could damage relations with our foreign partners.

Of additional note, we reviewed the records of the 11 cases cited in the OIG Report in which the fugitive defendants received "time served" sentences after being returned to the United States to see if those cases could provide useful guidance for future extradition decisions. In our review, we noted that the fugitive defendants in all 11 cases pleaded guilty to at least one of the felony charges against them, which resulted in the fugitive defendants receiving credit for accepting responsibility for their crimes and therefore lowering their suggested sentencing ranges under the U.S. Sentencing Guidelines. We also found that several of the defendants cooperated with the government in its investigation of others after returning to the United States, which assisted the government in bringing additional individuals to justice, and resulted in sentencing credit (and thus lower sentences) for the fugitive defendants. Additionally, we noted that many

[1] These numbers may differ slightly from those available from the Marshals Service because OIA's count (1) does not include all of the cases in which the Marshals Service assists in the transportation of fugitives being deported rather than extradited, as does that of the Marshals Service; and (2) does include some cases in which an agency other than the Marshals Service, such as the FBI, has taken responsibility for the transportation of the fugitive being surrendered to the United States.

of the defendants were ordered to pay restitution to victims as a result of their guilty pleas, and several were ordered to forfeit the proceeds of their crimes. The collective sum of the restitution and forfeiture ordered in these 11 cases exceeded $2.8 million, significantly more than the costs incurred to remove these defendants. We also noted that although the defendants were sentenced to "time served," the defendants each served an average of approximately 20 months in prison in (1) the foreign country while awaiting extradition at our request,[2] (2) the United States prior to sentencing, or (3) a combination thereof.

To address its concerns regarding the high costs of removal activities, OIG has made three recommendations to ODAG. We concur with each recommendation, and have included our responses below.

Recommendation 1: *The OIG recommends that ODAG consider whether the Department should seek legislative change to address the significant costs of venue-specific international removals, such as those associated the Controlled Substance Act.*

> **Response**: **Concur**. The Department agrees that current law related to extraterritorial offenses is cumbersome and, in certain circumstances, can greatly increase the costs of international removals. As such, the Department will consider whether to seek legislation that would amend federal law to mirror modern practice, in which the decision of where an extraterritorial case should be indicted and tried is based on the nature of the particular case and where the best investigative and prosecutorial resources to handle the case are located.

Recommendation 2: *The OIG recommends that ODAG enhance the international fugitive removal activity decision-making process to ensure that the decision makers employ a comprehensive assessment of all relevant factors, including costs, and assess the practicality of implementing a process to begin tracking and analyzing the outcomes of removal cases for use in future removal decisions.*

> **Response**: **Concur**. Given the resources that may need to be expended to support an international extradition, we agree that it is appropriate to consider whether the expenditure of those resources, and, particularly, extraordinary costs, is merited in terms of the seriousness of the charged offense(s), the likely sentence, and other prosecutorial considerations.

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[2] As the OIG Report notes, by statute federal defendants receive credit for the time they spend in custody abroad while an extradition request is being heard. Judges often take into account the length of time a defendant served in prison abroad when sentencing fugitive defendants. To the extent we were able to discern from available records, we noted that the judges in many of the 11 cases took into account the time the fugitive defendants spent in prison abroad in ordering "time served" sentences.

The Office of International Affairs will issue policy guidance for its attorneys – in large measure memorializing current practice – to ensure there is appropriate consideration of resource implications in their discussions with prosecutors regarding whether extradition should be sought in a case. The policy will direct OIA attorneys to discuss with prosecutors the following factors, among other factors, when deciding whether extradition should be sought in a given case: (1) transportation costs, when it appears that the use of charter aircraft or other extraordinary costs will be required, and (2) resource implications, including but not limited to transportation costs, where the likely sentence may not justify the expenditure of such resources, either because the case involves only lesser offenses or because the prosecution's case has deteriorated significantly since being charged.

The Office of International Affairs will also assess the practicality of implementing a process to track and analyze outcomes, as well as the usefulness of having such data to inform future extradition decisions.

Recommendation 3: *The OIG recommends that the ODAG examine the feasibility of developing an appropriate cost-sharing model among federal, state and local agencies for funding international fugitive removals, including at least partial reimbursement from state and local agencies and the use of DOJ non-component specific funding sources to fund at least a portion of the removal costs.*

Response: **Concur**. The Department has directed the Justice Management Division to lead the effort to examine the feasibility of developing an appropriate cost-sharing model among federal, state and local agencies for funding international fugitive removals.

UNITED STATES MARSHALS SERVICE RESPONSE TO THE DRAFT REPORT

U.S. Department of Justice

United States Marshals Service

Office of the Associate Director for Operations

Alexandria, Virginia 22301-1025

September 9, 2014

MEMORANDUM TO: Raymond Beaudet
Assistant Inspector General for Audit

FROM: William Snelson
Associate Director for Operations

SUBJECT: Response to Draft Audit Report: Audit of the Department of Justice's Management of International Fugitive Removal Activities

This memorandum is in response to correspondence from the Office of the Inspector General (OIG) requesting comment on the recommendations associated with the subject draft audit report. Please find attached our response.

Should you have any questions or concerns regarding this response, please contact Isabel Howell, Audit Liaison, at 571-481-6679.

Attachments

cc: Richard Theis, Director
Audit Liaison Group
Internal Review and Evaluation Office
Justice Management Division

Isabel Howell
External Audit Liaison
United States Marshals Service

USMS Response to OIG Draft Audit Report
Audit of the Department of Justice's
Management of International Fugitive Removal Activities

Recommendation 4: Establish a mechanism for accurately and completely tracking its international fugitive removal activities, including all costs associated with those removals and whether the removals involve venue-specific charges.

Response (Concur): The International Investigations Branch (IIB) is currently working with the United States Marshals Service (USMS) Information Technology Division to create a technical solution that will automate the removal business process and consolidate data currently maintained across a wide spectrum of databases. This will allow for a centralized system that can be utilized not only to enhance the business process workflow, but allow for the aggregation of data where the information will be gathered and expressed in an overview form for purposes such as reporting and statistical analysis. In the interim, IIB designed a new international fugitive removal activities database in SharePoint that manually captures the same information from the existing database and also includes mandatory data fields for travel costs, overtime, charter costs, and venue-specific cases. Although these additions are manual entries that require personnel to extract data from various external systems, this interim solution will allow for the centralized location of all pertinent information. This new removal activities database will be implemented on October 1, 2014 for fiscal year 2015.

Recommendation 5: Review historical removal events to establish norms for executing removals based upon various factors, including the location of the fugitive and the charge against the fugitive, and develop a process to routinely analyze removal events to identify and assess deviations from the established norms.

Response (Concur): Institutional knowledge within IIB provides for coordinating and executing removals within established norms. Each international removal is assessed by IIB personnel to determine if there are factors outside of routine events. The assessment for each removal is conducted by reviewing information provided by the Department of Justice – Office of International Affairs (OIA) and collecting additional intelligence from USMS databases. Circumstances that deviate from established norms and require extraordinary resources must be reviewed and approved by the Chief or Deputy Chief of IIB. To accurately memorialize this process, IIB developed a document that must be used to identify the proposed deviations; justification for the non-routine practices and the approval or denial by the Chief or Deputy Chief of IIB. This document will be implemented on October 1, 2014. Additionally, IIB management will conduct a quarterly review of removal data to determine trends that are

impacting the work process or costs of removals so that a potential remedial action can be taken in a timely manner.

Recommendation 6: Establish written procedures for determining the baseline number of deputies needed to conduct international fugitive removals, and ensure that a reasonable justification is documented and approved for any removals conducted with more than the standard number of deputies.

Response (Concur): Although each removal is currently reviewed for personnel needs based on security, number of prisoners, etc., IIB is in the process of developing written Removal Standard Operating Procedures, as well as reviewing and updating the Agency's policy, USMS Policy 8.24, *International Extradition and Rendition.* Both documents will be updated to reflect prisoner handling requirements and procedures for removals. In addition to this, IIB has created a written justification form for requesting additional resources (USMS Form number TBD) that must be approved by the Chief or Deputy Chief of IIB. The form will be effective October 1, 2014.

Recommendation 7: Establish a mechanism for evaluating whether travel itineraries associated with international fugitive removal events are operationally appropriate.

Response (Concur): Currently IIB coordinates, provides logistical guidance, selects travel dates, and directs Deputy United States Marshals (DUSMs) on how to execute all international removal events. In some instances, due to time constraints, circumstances that deviate from the norm, etc., DUSMs are instructed to travel on specific flights. In instances where the removal is routine, DUSMs may have the option to select from numerous flights. However, those flights are reviewed each time by IIB for concurrence. IIB will explore the feasibility of creating a matrix that could crosscut all variables related to travel in an attempt to establish a baseline for all trips.

Recommendation 8: Establish a mechanism for the IIB to routinely review the overtime costs charged to the international removal project code and ensure that the overtime costs are appropriate and reasonable.

Response (Concur): Current IIB procedures provide authorization for overtime via a USMS form to district management prior to DUSMs traveling on international removals when coordination of these events dictate overtime will be incurred. The form is then returned to IIB post-removal, with an analysis of exactly how much overtime is incurred per DUSM. The form is prepared by the DUSM, signed by district management, and analyzed and signed by IIB before money is disbursed. There are instances in which overtime is incurred on international fugitive removals when it was not foreseen. In those circumstances, the form is submitted, analyzed, and

signed off in the same manner. The new international removal activities database will require the addition of total overtime costs for each event, if it applies. Additionally, routine checks of an external financial system will be conducted to ensure only authorized overtime funds are being withdrawn.

Recommendation 9: Establish written procedures requiring IIB to document the justification for using a charter aircraft for international fugitive removals and that the decision is approved at an appropriate level of authority.

Response (Concur): As detailed in the response for Recommendation 6, IIB has created a written justification form for requesting additional resources (USMS Form number TBD) that must be approved by the Chief or Deputy Chief of IIB. The form is effective October 1, 2014.

OFFICE OF THE INSPECTOR GENERAL ANALYSIS AND SUMMARY OF ACTIONS NECESSARY TO CLOSE THE REPORT

The Office of the Inspector General (OIG) provided a draft of this audit report to the United States Marshals Service (USMS) and the Office of the Deputy Attorney General (ODAG). The USMS and ODAG responses are incorporated in Appendices 3 and 4 of this final report. The following provides the OIG analysis of the responses and summary of actions necessary to close the report.

Analysis of ODAG Response

In response to our audit report, the ODAG and USMS concurred with our recommendations and discussed the actions they will implement in response to our findings. As a result, the report is resolved.

In its response, the ODAG acknowledges the significant increase in removal activity since FY 2000, as well as the significant investigative and resource intensive aspect of international extraditions. The ODAG also notes that the foreign countries from which the fugitives will be extradited can expend a significant amount of resources during the extradition process, and that abandoning a case on the eve of a fugitive's surrender could damage relations with foreign partners.

We recognize the importance of establishing and maintaining favorable foreign relations and that repeated decisions to forgo removing international fugitives could strain those relationships. We believe, however, that the Department needs a more fully informed decision-making process that appropriately considers relevant factors, including both foreign relations and fiscal responsibility. As indicated in our report, with the number and cost of removals increasing, the USMS is challenged by competing demands for its limited funding resources, which is impacting the USMS's ability to address its other priority areas. For instance, when significantly costly removals occur, the USMS may be unable to address another equally important matter. Therefore, we believe the Department must enhance its decision-making process to include removal costs as a factor for consideration so that mission-related priorities can be observed.

The ODAG's response also included some summary information about the 11 cases cited in our report in which the fugitive defendants received "time served" sentences after being returned to the United States. We are pleased that the Department reviewed these cases to analyze the outcomes, as suggested in recommendation number 2. The ODAG's review provides valuable information about the cases and the results achieved following the fugitives' removal to the United States. Prior to doing this research, however, the Department did not know whether the removal of these 11 fugitives were fully advantageous to the United States in light of the outcomes. Moreover, it is important to note that our identification of these 11 cases is from a limited number of completed removals.

There were hundreds of cases for which we could not obtain outcome information because the cases had not yet reached a conclusion or they were non-federal cases and the state and local public resources did not provide us with sentencing information. Therefore, it is possible that other instances of costly removals exist that may not have been fully advantageous to the United States in light of the outcomes.

In sum, a more comprehensive approach to removal decision making, including identification of estimated costs and more rigorous consideration of potential outcomes, would improve this important function. As noted in recommendation number 2 below, the ODAG concurred with our recommendation to enhance the decision-making process by developing processes that require the consideration of costs and include an examination of removal outcomes.

Recommendations to the ODAG:

1. **Consider whether the Department should seek legislative change to address the significant costs of venue-specific international removals, such as those associated with the Controlled Substance Act.**

   Resolved. The ODAG concurred with our recommendation. In its response, the ODAG agreed that the current law related to extraterritorial offenses is cumbersome and, in certain circumstances, can greatly increase the costs of removal events. The ODAG stated that the Department will consider whether to seek legislation that would amend federal law to mirror modern practice, in which the decision of where an extraterritorial case should be indicted and tried is based on the nature of the particular case and where the best investigative and prosecutorial resources to handle the case are located.

   The recommendation can be closed when the ODAG provides documentation that it formally considered seeking legislative change to address the significant costs associated with venue-specific international removal events. If the Department chooses not to seek any legislative changes it should provide the OIG with a detailed explanation for the decision.

2. **Enhance the international fugitive removal activity decision-making process to ensure that the decision makers employ a comprehensive assessment of all relevant factors, including costs, and assess the practicality of implementing a process to begin tracking and analyzing the outcomes of removal cases for use in future removal decisions.**

   Resolved. The ODAG concurred with our recommendation and agreed that when the Department is evaluating a potential removal case, it is appropriate to consider whether the expenditure of resources is merited in terms of other case-related factors. The ODAG stated in its response that the Office of International Affairs (OIA) will issue policy guidance to its attorneys to

ensure the appropriate consideration of resource implications in discussions with prosecutors when determining whether to seek an extradition. This policy will direct OIA attorneys to consider, in addition to case-related factors, transportation costs. OIA attorneys will discuss with prosecutors the use of charter aircraft or other required extraordinary costs, as well as resource implications where the likely sentence may not justify the expenditure of such resources, including when the case involves a lesser offense or the significant deterioration of evidence since the fugitive was originally charged. Additionally, OIA will also assess the practicality of implementing a process to track and analyze the outcomes of removal cases for use in future removal decisions.

We acknowledge the OIA's efforts to consider resource implications, including transportation costs, in removal decisions, and believe that this process will be enhanced by the USMS's actions to close our other recommendations. Specifically, in its response to Recommendation 4, the USMS stated that it plans to implement a process to more accurately and completely track and analyze its data relating to removal costs and resources. Further, in response to Recommendation 9, the USMS indicated that it plans to enhance its process related to aircraft charters, including requiring written justification for the use of charter aircraft.

This recommendation can be closed when we receive evidence that the OIA has established and implemented policy guidance that considers all factors, including specific resource implications such as transportation costs, when determining whether to seek extradition. Additionally, evidence of the OIA's assessment of the practicality of implementing a process to track and analyze the outcomes of removal cases should also be provided.

3. Examine the feasibility of developing an appropriate cost-sharing model among federal, state, and local agencies for funding international fugitive removals, including at least partial reimbursement from state and local agencies and the use of DOJ non-component specific funding sources to fund at least a portion of the removal costs.

Resolved. The ODAG concurred with our recommendation. The ODAG stated in its response that the Department has directed the Justice Management Division (JMD) to lead the effort to examine the feasibility of developing an appropriate cost-sharing model among federal, state, and local agencies for funding international fugitive removal events.

This recommendation can be closed when the ODAG provides evidence that JMD has examined the development of a cost-sharing model among federal, state, and local agencies for funding international fugitive removal events. This evidence should include a detailed explanation and documentation of JMD's efforts and results.

Recommendations to the USMS:

4. **Establish a mechanism for accurately and completely tracking its international fugitive removal activities, including all costs associated with those removals and whether the removals involve venue-specific charges.**

   Resolved. The USMS concurred with our recommendation. The USMS stated in its response that its International Investigations Branch (IIB) and Information Technology Division are creating a technical solution that will automate the removal business process and consolidate data currently maintained across multiple databases. The USMS said that automating this process will not only enhance the workflow but also allow for the aggregation of data that, in turn, can be summarized for reporting and statistical analysis.

   The USMS also stated that until this technical solution is completed, the IIB designed an interim electronic solution to allow for the centralized consolidation of all relevant information, including travel costs, overtime, charter flight costs, and venue-specific cases. According to the USMS, this database will be implemented on October 1, 2014.

   This recommendation can be closed when the USMS provides evidence that the automation of the removal business process, including the consolidation of data across multiple databases, accurately and completely tracks international fugitive removal activities, including all costs associated with those removals and whether the removals involve venue-specific charges. While the USMS develops this long-term solution, the USMS should also keep us informed on the development and implementation of the IIB's interim electronic solution.

5. **Review historical removal events to establish norms for executing removals based upon various factors, including the location of the fugitive and the charge against the fugitive, and develop a process to routinely analyze removal events to identify and assess deviations from the established norms.**

   Resolved. The USMS concurred with our recommendation. In its response, the USMS stated that IIB personnel's institutional knowledge provides for coordinating and executing removals within established norms and that the IIB has developed a document that will be used to identify and justify deviations from established norms. The USMS also noted that the Chief or Deputy Chief of the IIB will be required to approve any requested deviations prior to executing removal events. The USMS said that this document will be implemented on October 1, 2014. In addition to the implementation of this process, the USMS stated that IIB management will conduct quarterly reviews of removal data to determine trends that are impacting the work process or costs of removal events and, in turn, take any necessary remedial action in a timely manner.

This recommendation can be closed when the USMS provides evidence that it has defined established norms for executing removal events and has established a process for approving deviations from the established norms. The USMS should also provide evidence of the IIB management's quarterly review of removal data, including the results of those reviews to identify trends that impact the work process or cost of removal events, as well as the potential remedial actions taken by the IIB.

6. Establish written procedures for determining the baseline number of deputies needed to conduct international fugitive removals, and ensure that a reasonable justification is documented and approved for any removals conducted with more than the standard number of deputies.

Resolved. The USMS concurred with our recommendation. The USMS stated in its response that the IIB is developing written Removal Standard Operating Procedures, as well as reviewing and updating USMS Policy 8.24, *International Extradition and Rendition*. The USMS said that these documents will reflect prisoner handling requirements and procedures for removals. In addition, the USMS stated that the IIB created a written justification form and that the form requires approval by the Chief or Deputy Chief of the IIB. According to the USMS, this form will go into effect on October 1, 2014.

This recommendation can be closed when the USMS provides the finalized, written Removal Standard Operating Procedures and the updated USMS Policy 8.24, *International Extradition and Rendition*, that defines the standard number of deputies needed to conduct international fugitive removals. In addition, the USMS should provide evidence of the implementation of the new additional resource request and approval form.

7. Establish a mechanism for evaluating whether travel itineraries associated with international fugitive removal events are operationally appropriate.

Resolved. The USMS concurred with our recommendation. The USMS stated in its response that the IIB currently provides logistical guidance, selects travel dates, and directs deputies on how to execute all international removal events. However, the USMS stated that in some instances, deputies may have the option to select from numerous flights and the flights selected are reviewed by the IIB for concurrence. The USMS said that the IIB will assess the feasibility of creating a matrix that could encompass all travel-related variables in an attempt to establish a baseline for removal-related travel.

We acknowledge the USMS's efforts to examine the feasibility of developing a matrix of travel-related variables and establishing a baseline for removal-related travel. However, we believe that the USMS should establish

formal, written guidelines requiring IIB personnel to review travel itineraries to ensure the itineraries are operationally appropriate.

This recommendation can be closed when the USMS provides evidence that it has established and implemented a mechanism for evaluating whether travel itineraries associated with the international fugitive removal events are operationally appropriate.

8. Establish a mechanism for the IIB to routinely review the overtime costs charged to the international removal project code and ensure that the overtime costs are appropriate and reasonable.

Resolved. The USMS concurred with our recommendation. In its response, the USMS stated that current procedures require the use of a form indicating IIB's authorization of deputy overtime prior to the execution of a removal event. The USMS said that following the completion of a removal event, the deputy indicates the actual overtime incurred on the form, which is then signed by district management and submitted to the IIB for review and approval prior to the disbursement of any money. The USMS said that its new efforts to track international removal activities and costs (mentioned in response to Recommendation Number 4) will require the addition of total overtime costs for each event, if applicable. Additionally, the USMS stated that it will conduct routine checks of an external financial system to ensure only authorized overtime funds are withdrawn.

The current procedures as specified in the USMS's response are different from the information provided to us during the audit. As explained in our report, IIB officials told us that the planning stage for a removal event includes identifying the amount of overtime that is expected to be incurred on the event. Following the completion of removal events, the deputies record actual overtime hours in the USMS's official time and attendance system, and the deputies' supervisors approve the actual overtime hours as part of the USMS's payroll certification process. However, we were told that the IIB does not review or reconcile overtime charges on individual removal events. Based on our discussions with IIB officials, it is our understanding that the IIB was unaware of the actual overtime hours incurred on removal events, and that the IIB did not review any overtime reports from the USMS's time and attendance system (or elsewhere) to ensure that the overtime costs charged against the removal event project code were appropriate and reasonable. During our audit, we requested and reviewed overtime documentation and did not find any indication of a reconciliation of actual overtime hours incurred on removal events.

This recommendation can be closed when the USMS provides evidence that it has established and implemented a mechanism for the IIB to routinely review the overtime costs charged to the international removal project code and ensure that the overtime costs are appropriate and reasonable.

9. Establish written procedures requiring the IIB to document the justification for using a charter aircraft for international fugitive removals and that the decision is approved at an appropriate level of authority.

Resolved. The USMS concurred with our recommendation. In its response, the USMS stated that it plans to follow the same course of action in addressing this recommendation as it is for Recommendation Number 6. Specifically, the USMS stated that the IIB created a written justification form and that the form requires approval by the Chief or Deputy Chief of the IIB. According to the USMS, this form will go into effect on October 1, 2014. In response to Recommendation Number 6, the USMS stated that the IIB is also developing standard operating procedures for removal events, as well as updating an existing USMS policy. As a result, the IIB should ensure that it incorporates written procedures for documenting the justification for and approval of the use of charter aircraft when conducting a removal event within this guidance.

This recommendation can be closed when the USMS provides evidence that it has established and implemented written procedures requiring the IIB to document the justification for using charter aircraft for international fugitive removals and that the decision is approved at an appropriate level of authority.

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