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COMBATING ALIEN SMUGGLING

The Federal Response Can Be Improved

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Highlights

Highlights of [GAO-05-892T](#), a testimony before the Subcommittee on Criminal Justice, Drug Policy and Human Resources, Committee on Government Reform, House of Representatives

Why GAO Did This Study

Globally, alien smuggling generates billions of dollars in illicit revenues annually and poses a threat to the nation's security. Creation of the Department of Homeland Security (DHS) in March 2003 has provided an opportunity to use financial investigative techniques to combat alien smugglers by targeting and seizing their monetary assets. For instance, the composition of DHS's largest investigative component—U.S. Immigration and Customs Enforcement (ICE)—includes the legacy Customs Service, which has extensive experience with money laundering and other financial crimes. Another DHS component, U.S. Customs and Border Protection (CBP) has primary responsibility for interdictions between ports of entry. In summer 2003, ICE announced that it was developing a national strategy for combating alien smuggling. This testimony is based on GAO's May 2005 report on the implementation status of the strategy and investigative results in terms of convictions and seized assets.

What GAO Recommends

GAO's May 2005 report recommended that (1) the Secretary of Homeland Security establish a mechanism for tracking the results of referrals made by CBP to ICE and (2) the Attorney General consider developing and submitting to Congress a legislative proposal for amending the civil forfeiture authority for alien smuggling. The departments agreed with the recommendations.

www.gao.gov/cgi-bin/gettrpt?GAO-05-892T.

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

COMBATING ALIEN SMUGGLING

The Federal Response Can Be Improved

What GAO Found

As of July 5, 2005, ICE had not finalized its strategy for combating alien smuggling. ICE was adjusting the draft strategy to focus on the southwest border and encompass all aspects of smuggling, aliens as well as drugs and other contraband. In adjusting the strategy, ICE officials stressed the importance of incorporating lessons learned from ongoing follow-the-money approaches such as Operation ICE Storm, a multi-agency task force launched in October 2003 to crack down on migrant smuggling and related violence in Arizona. Also, the strategy's effectiveness depends partly on having clearly defined roles and responsibilities for ICE and CBP, two DHS components that have complementary antismuggling missions. CBP is primarily responsible for interdictions between ports of entry and ICE for investigations that extend to the U.S. interior. In this regard, ICE and CBP signed a memorandum of understanding in November 2004 to address their respective roles and responsibilities, including provisions for sharing information and intelligence. Currently, however, there is no mechanism in place for tracking the number and the results of referrals made by CBP to ICE for investigation. CBP and ICE officials acknowledged that establishing a tracking mechanism could have benefits for both DHS components. Such a mechanism would help ICE ensure that appropriate action is taken on the referrals. Also, CBP could continue to pursue certain leads if ICE—for lack of available resources or other reasons—cannot take action on the referrals.

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

Aliens Held in "Stash" House in Southern California



Source: ICE.

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss federal efforts to combat alien smuggling. This transnational crime globally generates illicit revenues estimated to total billions of dollars annually and is recognized as a significant and growing problem that can pose a serious threat to the security of the United States, a primary destination country. Although it is likely that most aliens smuggled into the United States seek economic opportunities, some are brought into the United States as part of criminal or terrorist enterprises. This concern has heightened since September 11, 2001. Creation of the Department of Homeland Security (DHS) in March 2003 has provided new opportunities to more effectively combat alien smuggling, particularly in reference to using financial investigative techniques to target and seize the monetary assets of smuggling organizations. For instance, the department's largest investigative component—U.S. Immigration and Customs Enforcement (ICE)—integrates the legal authorities and investigative tools of the legacy Immigration and Naturalization Service (INS) and the U.S. Customs Service, which has extensive experience in combating money laundering and other financial crimes. Another DHS component, U.S. Customs and Border Protection (CBP), has a complementary antismuggling mission with primary responsibility for interdictions between ports of entry. Given their complementary antismuggling missions, CBP makes referrals to ICE on alien-smuggling interdictions that may warrant further investigation.

At congressional hearings 2 years ago, in June and July 2003, ICE officials testified that ICE was developing a national strategy to dismantle criminal and terrorist organizations that smuggle or traffic in people by tracing and stripping away their monetary assets. My testimony today will address two principal questions:

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

My testimony is based on a report we issued in May 2005 to the House Judiciary Subcommittee on Immigration, Border Security, and Claims.¹ Also, on July 5, 2005, we contacted ICE headquarters to obtain an update on the implementation status of ICE’s strategy for combating alien smuggling.

Summary

Although its development was announced as early as June 2003, ICE’s national strategy for combating alien smuggling had not been finalized as of July 5, 2005. In the absence of a national strategy, ICE has used various means to provide interim guidance to investigators. ICE officials said the draft strategy was being adjusted to broadly cover all aspects of smuggling, encompassing aliens as well as drugs and other illegal contraband, and to focus initially on the southwest border. In its official response to our report, DHS said “This narrowed focus on the southwest border will allow ICE to review best practices and evaluate lessons learned before an expanded nationwide strategy is finalized.” For example, DHS cited Operation ICE Storm as a strategic model for antismuggling operations in other parts of the nation. Operation ICE Storm is a multi-agency task force launched in October 2003 to crack down on migrant smuggling and related violence in Arizona. Another reason for the strategy’s continuing development period is that the working relationship of ICE and CBP is still evolving. The strategy’s effectiveness depends partly on having clearly defined roles and responsibilities for these two DHS components, which have complementary antismuggling missions. In this regard, ICE and CBP signed a memorandum of understanding in November 2004 to address their respective roles and responsibilities, including provisions for sharing information and intelligence. Currently, however, there is no mechanism in place for tracking the number and the results of referrals or leads made by CBP to ICE for investigation. Without such a mechanism, there may be missed opportunities for identifying and developing cases on large or significant alien-smuggling organizations. CBP and ICE officials acknowledged that establishing a tracking mechanism could have benefits for both agencies. Such a mechanism would help ICE ensure that appropriate action is taken on the referrals. Also, CBP could continue to pursue certain leads if ICE—for lack of available resources or other reasons—cannot take action on the referrals. Our May 2005 report recommended that the Secretary of Homeland

¹GAO, *Combating Alien Smuggling: Opportunities Exist to Improve the Federal Response*, GAO-05-305 (Washington, D.C.: May 27, 2005).

Security establish a referral-tracking mechanism. DHS agreed with our recommendation. DHS said CBP and ICE, in consultation with Border and Transportation Security, would work together to identify and implement a solution to address our recommendation.

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

²Also, according to the Department of Justice, alien-smuggling-related activity may have been prosecuted under a variety of other federal criminal statutes covering, for example, passport fraud, immigration document fraud, bribery of a public official, and racketeering activity.

authority for alien smuggling. The Department of Justice agreed with our recommendation and said it plans to move forward with a proposal as GAO recommended.

Background

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

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

Alien smuggling generally is prosecuted under section 274 of the Immigration and Nationality Act, which prohibits knowingly or recklessly

bringing in, transporting, or harboring certain aliens.³ Depending on the conduct charged, a conviction under section 274 could result in a maximum penalty of 10 years' imprisonment per alien smuggled. Moreover, significant enhanced penalties are provided for some section 274 violations that involve serious bodily injury or placing life in jeopardy. If certain violations result in the death of any person, the convicted defendant may be punished by imprisonment for any term of years or be subjected to a death sentence.⁴ Other federal criminal statutes may also be applicable. Specifically, alien-smuggling-related offenses are among the list of Racketeer Influenced and Corrupt Organizations predicate offenses (18 U.S.C. § 1961(1)) and also are included within the definition of specified unlawful activity for purposes of the money-laundering statute (18 U.S.C. § 1956). Further, criminal and civil forfeiture statutes may apply to alien-smuggling cases.

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

³See 8 U.S.C. § 1324. Also, as mentioned previously, alien-smuggling-related activity may be prosecuted under a variety of other federal criminal statutes covering, for example, passport fraud, immigration document fraud, bribery of public officials, and racketeering activity.

⁴There are various differences in penalty provisions applicable to alien smuggling. For instance, there are mandatory minimum penalties for certain violations of 8 U.S.C. § 1324(a)(2) but not for similar violations of 8 U.S.C. § 1324(a)(1)(A). Also, enhanced penalties for causing serious bodily injury or placing life in jeopardy apply to violations of 8 U.S.C. § 1324(a)(1)(A) but not to similar violations of 8 U.S.C. § 1324(a)(2). Further, the death penalty or imprisonment for life may be imposed for violations of 8 U.S.C. § 1324(a)(1)(A) in which death results, but such penalties are not available for similar violations of 8 U.S.C. § 1324(a)(2).

documents. Perhaps the most coveted and sought after travel documents in the world are U.S. passports and visas. Alien smuggling and travel document fraud often are inextricably linked.

An interagency coordination mechanism to help ensure that available resources are effectively leveraged is the National Security Council's Migrant Smuggling and Trafficking Interagency Working Group, which is cochaired by State and Justice. The Interagency Working Group has a targeting subgroup, whose role is to identify for investigation and prosecution the most dangerous international alien smuggling networks, especially those that pose a threat to national security. Another coordination mechanism is the Human Smuggling and Trafficking Center, an interagency entity for disseminating intelligence and other information to address the separate but related issues of alien smuggling, trafficking in persons, and clandestine terrorist travel. Although its establishment was announced in December 2000, the center was not operational until July 2004.

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

ICE's Strategy for Combating Alien Smuggling Not Yet Issued

Although its development was announced as early as June 2003, a national strategy for combating alien smuggling had not been finalized and implemented by ICE as of July 5, 2005. During congressional testimony,⁵ an ICE official said ICE was developing a strategy that would address alien smuggling (and human trafficking) at the national and international level because as in the war on terrorism, the most effective means of addressing these issues is by attacking the problem in source and transit countries to prevent entry into the United States. In the absence of a national strategy to combat alien smuggling, including investigating the money trail, ICE has used various means to provide interim guidance to investigators. Such guidance included, for instance, the formation of working groups with members from various field offices and disciplines, as well as a presentation at a March 2004 conference of special-agents-in-charge and attachés. Moreover, ICE said it continues to provide guidance to the field in the form of training seminars and managerial conferences. Also, ICE indicated that it has posted guidance and policy memorandums to the field on its Web site, which is available and accessible to agents at their desktops for reference. According to ICE, the Web site is regularly reviewed and updated to ensure that the most recent guidance is available to the field. Additionally, ICE officials said that headquarters staff routinely travel to field offices to review ongoing undercover operations and large-scale investigations to help ensure compliance with existing policies and priorities.

ICE officials indicated that the draft strategy was being adjusted to broadly cover all aspects of smuggling—encompassing aliens, as well as drugs and other illegal contraband—and to focus initially on the Southwest border, between the United States and Mexico—the most active area in terms of smuggling activity and open investigations. The officials explained that ICE was developing a comprehensive southwest border strategy, given the anticipated displacement of smuggling activity to other areas along the border resulting from Operation ICE Storm and its expansion statewide under the Arizona Border Control Initiative. The officials explained that criminal enterprises tend to smuggle not only people but also drugs, weapons, counterfeit trade goods, and other illegal contraband. The ICE officials emphasized that irrespective of whether smuggling involves aliens or contraband, ICE can use similar investigative

⁵Statement of Tom Homan, ICE Interim Resident Agent-In-Charge (San Antonio, Tex.), at a hearing (“Deadly Consequences of Illegal Alien Smuggling”) before the Subcommittee on Immigration, Border Security, and Claims of the Committee on the Judiciary, House of Representatives, June 24, 2003.

techniques for following the money trail. Moreover, the officials said that, following a certain period of implementation, the Southwest border strategy would be evaluated and expanded into a nationwide strategy. The officials noted, for instance, that although there is no one law enforcement strategy totally effective in all areas of the nation, the methodologies applied in Arizona with both Operation ICE Storm and the Arizona Border Control Initiative would be evaluated and tailored for use in other parts of the country.

The strategy's continuing development period is attributable partly to organizational and training needs associated with integrating the separate and distinct investigative functions of the legacy INS and the U.S. Customs Service, following creation of DHS in March 2003. Also, ICE and CBP—two DHS components with complementary antismuggling missions—signed a memorandum of understanding in November 2004 to address their respective roles and responsibilities, including provisions to ensure proper and timely sharing of information and intelligence. CBP has primary responsibility for interdictions between ports of entry while ICE has primary responsibility for investigations, including those resulting from alien smuggling interdictions referred by CBP. Accordingly, sharing of information between the two components is critical to achieving ICE's investigative objective of determining how each single violation ties into the larger mosaic of systemic vulnerabilities and organized crime. The ability to make such determinations should be enhanced when DHS components have compatible or interoperable information technology systems—which is a long-term goal of an ongoing, multiyear project called the Consolidated Enforcement Environment. Currently, however, there is no mechanism in place for tracking the number and the results of referrals or leads made by CBP to ICE for investigation, including even whether ICE declined to act on the referrals. Without such a mechanism, there may be missed opportunities for identifying and developing cases on large or significant alien-smuggling organizations. For instance, if a tracking mechanism were in place, CBP could continue pursuing certain leads if ICE—for lack of available resources or other reasons—does not take action on the referrals.

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

The principal federal statute used to prosecute alien smugglers is section 274 of the Immigration and Nationality Act, which prohibits knowingly or recklessly bringing in, transporting, or harboring certain aliens. Under this statute, which is codified at 8 U.S.C. § 1324, about 2,400 criminal defendants were convicted in federal district courts in fiscal year 2004. According to federal officials we interviewed, most alien-smuggling prosecutions stem from reactive or interdiction-type cases at the border, wherein in-depth investigations to follow a money trail are not warranted.

However, during our field visits in September 2004 to Phoenix and Houston, we asked U.S. Attorney's Office officials for their observations regarding whether there has been an increasing emphasis on the financial aspects of alien-smuggling investigations since the creation of DHS and ICE. In Arizona, federal prosecutors emphasized that Operation ICE Storm is a clear indication of ICE's efforts to become more proactive in alien-smuggling investigations. Also, federal prosecutors in Texas (Houston) said the money trail is being pursued when appropriate, such as proactive cases involving smuggling organizations that are based in the Far East (e.g., Thailand and certain provinces in the People's Republic of China) and have networks in Latin America and Mexico. The federal officials noted that investigations of these cases may include FBI participation and the use of undercover agents and electronic surveillance and may result in assets being seized and suspects being charged with money laundering and violations of the Racketeer Influenced and Corrupt Organizations Act. More recently, in December 2004, ICE headquarters officials told us that ongoing alien-smuggling cases in other areas of the nation—Florida, Georgia, New York, and Washington—were also using financial investigative techniques and are expected to result in asset seizures. Because these cases were ongoing, the officials declined to provide specific details, other than information already made available to the public.

For fiscal year 2004, ICE reported seizures totaling \$7.3 million from its alien-smuggling investigations—plus an additional \$5.3 million generated by the state of Arizona under Operation ICE Storm. To obtain additional perspectives on the results of alien-smuggling investigations in terms of recovered funds or seized assets, we contacted Treasury's Executive Office for Asset Forfeiture, which provides management oversight of the Treasury Forfeiture Fund—the receipt account for the deposit of nontax forfeitures made pursuant to laws enforced or administered by the Internal Revenue Service-Criminal Investigation and DHS components (including ICE, CBP, the U.S. Secret Service, and the U.S. Coast Guard). The Treasury officials told us they anticipate that ICE will have increased seizures in

fiscal year 2005 or later, as ICE further applies its financial and money-laundering expertise to address alien smuggling. Similarly, ICE officials anticipate increased seizures. In this regard, for the first 6 months of fiscal year 2005, ICE reported seizures of \$7.8 million from alien-smuggling investigations.

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

To help investigators and prosecutors meet the opportunities and challenges associated with transnational crime, the United States has negotiated and signed more than 50 bilateral mutual legal assistance treaties (MLAT) with law enforcement partners around the world, according to the Department of Justice. Such treaties—which are a mechanism for obtaining evidence in a form admissible in a prosecution—provide for a broad range of cooperation in criminal matters, such as locating or identifying persons, taking testimonies and statements, obtaining bank and business records, and assisting in proceedings related to immobilization and forfeiture of assets.

To get a sense of the extent to which federal law enforcement agencies were using the MLAT process to follow the money trail abroad in alien smuggling cases, we contacted Justice’s Office of International Affairs, which is responsible for coordinating the gathering of international evidence and in concert with the State Department, engages in the negotiation of new MLATs. According to the Deputy Director, the number of outgoing requests for formal law enforcement assistance in alien-smuggling cases is few in comparison with cases in drug trafficking, money laundering, fraud, and various other offenses. For matters considered to be alien-smuggling cases, the Deputy Director noted that it would be very difficult to quantify the exact number of requests made to foreign countries because, among other reasons, the Office of International Affairs’ database was not originally designed to include a category of “alien smuggling.”

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

Generally, regarding asset seizures and forfeitures, ICE officials noted that there can be competing demands for investigative resources. The mission of ICE's Office of Investigations—which has more than 5,000 agents in 26 field offices nationwide—encompasses a broad array of national security, financial, and smuggling violations, including narcotics smuggling, financial crimes, illegal arms exports, commercial fraud, child pornography or exploitation, immigration fraud, and human trafficking. ICE headquarters officials cautioned that alien-smuggling cases, in comparison with drug cases, are much less likely to result in seizures of money. The officials explained that almost all drug deals are conducted in cash, and it is not unusual for law enforcement to arrest criminals handling hundreds of thousands or even millions of dollars in drug money. In contrast, the officials noted that alien-smuggling fees per person generally involve less money and the alien smuggler is not arrested with large cash amounts. However, even absent the significant differences in amounts of seized money or other assets from alien smugglers, ICE headquarters and field office officials stressed the importance and utility of applying investigative expertise for determining the scope and operational patterns of alien-smuggling organizations, identifying the principals, and obtaining evidence to build prosecutable cases.

Both criminal and civil forfeiture authority have limitations that affect the government's ability to seize real property in alien smuggling cases—particularly stash houses used by smugglers.⁶ Asset forfeiture law has long been used by federal prosecutors and law enforcement as a tool for punishing criminals and preventing the use of property for further illegal

⁶ These houses sometimes are also referred to as “drop” houses or “safe” houses where smugglers hide aliens while awaiting payment and travel arrangements to final destinations throughout the nation.

activity. In a criminal forfeiture action, upon conviction, the defendant forfeits and the government takes ownership of property that the defendant used to commit or facilitate the offense or property that constituted the proceeds of the illegal activity. Criminal asset forfeiture is rarely an option in alien-smuggling cases for two reasons. First, because criminal asset forfeiture is dependent on conviction of the defendant, it is not available if the defendant is a fugitive, which alien smugglers often are according to Justice. Second, because the stash house is often rental property, it is rare that the property owner is convicted as it is difficult to establish the owner's knowledge of the smuggling.

In contrast to criminal forfeiture, in a civil forfeiture action, the government is not required to charge the owner of the property with a federal offense. However, to forfeit property used to facilitate the offense but purchased with legitimately earned funds, the government must establish a substantial connection between the use of the property and the offense. Once that connection is established, the government can forfeit the house if the owner cannot show innocent ownership due to the owner's willful blindness to the criminal activity. However, taking civil action as an alternative to criminal action for real property seizures is not an option in alien smuggling cases. Civil forfeiture in alien smuggling cases is generally limited to personal property such as vessels, vehicles, and aircraft and does not extend to real property.⁷ Thus, the house used to hide the aliens and conduct the alien-smuggling business could not be forfeited in a civil forfeiture action. Civil forfeiture of real property is available in cases where the house was used to conduct drug transactions, including the storing of drugs and money, child pornography, and money laundering.⁸ In the view of Justice and ICE, this statutory distinction between alien smuggling and other criminal offenses is inappropriate.

An amendment to the civil forfeiture authority, according to Justice, would enhance federal efforts to dismantle smuggling organizations because would-be defendants often are fugitives, which makes criminal forfeiture unavailable. Also, a civil forfeiture authority for real property used to facilitate alien smuggling would enable the government to establish willful blindness arguments against landlords who hope to profit from such ventures without becoming directly involved. However, our May 2005 report noted that Justice does not have a legislative proposal on this

⁷ 8 U.S.C. § 1324(b).

⁸ See 18 U.S.C. §§ 881, 981, 2254.

subject pending before Congress because the department's legislative policy resources have been focused on other priorities.

Expanding civil forfeiture authority in alien smuggling cases to include real property used to facilitate the offense may raise concerns, including the potential for abuse of this type of forfeiture and the adequacy of protection for the rights of innocent property owners. In 2000, several reforms were made to civil asset forfeiture law to provide procedural protections for innocent property owners. These reforms were part of a compromise that was developed over several years by Congress, the executive branch, and interest groups. Some observers felt that the legislation did not provide enough reforms and protections, while others felt that it went too far and would curtail a legitimate law enforcement tool.

Conclusions

Creation of DHS in March 2003 has provided new opportunities to more effectively combat alien smuggling, particularly in reference to using financial investigative techniques to target and seize the monetary assets of smuggling organizations. However, after more than 2 years, the federal response to alien smuggling is still evolving, including development and implementation of a strategy to follow the money trail. Also evolving is the working relationship of ICE and CBP, two DHS components that have the primary responsibility for investigating and interdicting alien smugglers. Having clearly defined roles and responsibilities for these components is important, given their complementary antismuggling missions. In this regard, ICE's and CBP's November 2004 memorandum of understanding did not address a mechanism for tracking the number and the results of leads referred by CBP to ICE for investigation. If a tracking mechanism were in place, CBP could continue pursuing certain leads if ICE—for lack of available resources or other reasons—does not take action on the referrals. As such, a tracking mechanism would help to further ensure that large or significant alien-smuggling organizations are identified and investigated.

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

many cases to seize stash houses where smugglers hide aliens while awaiting payment and travel arrangements to final destinations throughout the nation.

To enhance the federal response to alien smuggling, our May 2005 report made two recommendations. Specifically, we recommended that

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

DHS and Justice expressed agreement with the respective recommendation. DHS said CBP and ICE, in consultation with Border and Transportation Security, would work together to identify and implement a solution to address our recommendation. Justice said it plans to move forward with a proposal as GAO recommended.

Mr. Chairman, this concludes my prepared statement. I would be happy to respond to any questions that you or Members of the Subcommittee may have.

Contact and Staff Acknowledgments

For information about this testimony, please contact Richard Stana, Director, Homeland Security and Justice Issues, at (202) 512-8777, or stanar@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Other individuals making key contributions to this testimony include Danny Burton, Grace Coleman, Frances Cook, Odilon Cuero, and Kathleen Ebert.

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