



June 2022

# ALTERNATIVES TO DETENTION

## ICE Needs to Better Assess Program Performance and Improve Contract Oversight

# GAO Highlights

Highlights of [GAO-22-104529](#), a report to congressional committees

## Why GAO Did This Study

ICE has wide discretion to detain or release individuals of foreign nationality awaiting resolution of their immigration court proceedings, except for individuals subject to mandatory detention. The ATD program, which ICE administers through a \$2.2 billion contract, uses electronic monitoring and case management to help ensure that individuals enrolled comply with release conditions, such as appearing at immigration court hearings. The explanatory statement accompanying the Consolidated Appropriations Act, 2020 includes a provision for GAO to review the ATD program.

This report examines, among other objectives, (1) what data show about participation in the ATD program, (2) the extent to which ICE has assessed ATD performance, and (3) how ICE manages and oversees the ATD contractor. GAO analyzed ICE contractor data from November 2014 through 2020; and reviewed ATD policies, performance reports, and contract documents. GAO also interviewed ICE and contractor officials from headquarters and the field.

## What GAO Recommends

GAO is making 10 recommendations, including that ICE establish performance goals that cover core program activities, improve external reporting of absconsion information, collect information needed to assess the contractor's performance against standards, and ensure the contractor addresses all audit findings. DHS concurred with the recommendations.

View [GAO-22-104529](#). For more information, contact Rebecca Gambler at (202) 512-8777 or [GamblerR@gao.gov](mailto:GamblerR@gao.gov).

June 2022

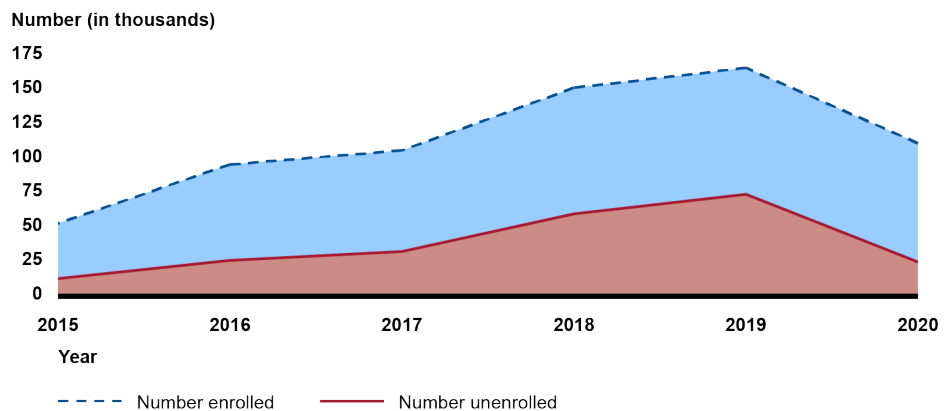
## ALTERNATIVES TO DETENTION

### ICE Needs to Better Assess Program Performance and Improve Contract Oversight

## What GAO Found

U.S. Immigration and Customs Enforcement (ICE) uses the Alternatives to Detention (ATD) program as one way to monitor individuals it releases into the community. GAO's analysis of ICE contractor data found that the number of individuals enrolled in the ATD program more than doubled from approximately 53,000 in 2015 to 111,000 in 2020. See figure. During this period, ICE unenrolled most participants before their immigration proceedings concluded. ICE placed about half of unenrolled participants on monitoring outside of the ATD program and about a quarter absconded (i.e. fled their address and could not be located).

**Number of Participants Enrolled and Unenrolled in the Alternatives to Detention Program, 2015-2020**



Source: GAO analysis of U.S. Immigration and Customs Enforcement contractor data. | GAO-22-104529

ICE collects data on the ATD program, such as whether participants attend their scheduled court hearings. ICE also developed a performance goal for fiscal year 2022, but ICE does not assess program performance for all core program activities and outcomes, such as referrals for community services. Establishing such goals would position ICE to assess the extent to which the program is achieving intended results and identify any needed improvements. In addition, ICE has not completely presented information on participants who abscond from the ATD program. For example, ICE does not include all relevant participants when calculating absconsion rates. By doing so, ICE could more completely demonstrate program performance related to absconsions and help ensure policymakers have the context needed to appropriately use the information.

ICE conducts some oversight of the contractor that helps implement the ATD program nationwide. For example, ICE conducts weekly audits intended to ensure that ATD participants receive the assigned level of supervision and services. However, ICE does not fully assess the contractor against the standards for performance established in the contract, nor follow-up and document whether the contractor resolves issues it identifies. Taking steps to improve contract oversight would help ICE ensure that the contractor is achieving outcomes as identified in the contract and provide reasonable assurance that the contractor is correcting identified issues.

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## Abbreviations

ATD	Alternatives to Detention
COR	Contracting Officer's Representative
DHS	Department of Homeland Security
ECMS	Extended Case Management Services
ERO	Enforcement and Removal Operations
ICE	U.S. Immigration and Customs Enforcement
MARVIN	Multi-Aspect Removal Verification Initiative

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June 22, 2022

The Honorable Chris Murphy  
Chairman  
The Honorable Shelley Moore Capito  
Ranking Member  
Subcommittee on Homeland Security  
Committee on Appropriations  
United States Senate

The Honorable Lucille Roybal-Allard  
Chairwoman  
The Honorable Chuck Fleischmann  
Ranking Member  
Subcommittee on Homeland Security  
Committee on Appropriations  
House of Representatives

Within the Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) is responsible for enforcing immigration laws, including arresting, charging, detaining or releasing, and removing certain individuals of foreign nationality. Except for those who are required by law to be detained during removal proceedings, ICE has wide discretion to detain or release individuals awaiting resolution of their proceedings in immigration court. When ICE releases individuals in removal proceedings on a conditional basis into the community, it is responsible for monitoring their compliance with the terms of their release. At the end of fiscal year 2020, there were approximately 3.26 million individuals who had been conditionally released while awaiting resolution of their removal proceedings, according to ICE.<sup>1</sup>

One way ICE monitors released individuals is through the Alternatives to Detention (ATD) program, administered by ICE's Enforcement and Removal Operations (ERO). The program uses case management and electronic monitoring to help ensure participants comply with their release conditions, such as requirements to appear at immigration court hearings, and with final orders of removal from the U.S. The number of ATD

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<sup>1</sup>Department of Homeland Security, *U.S. Immigration and Customs Enforcement Fiscal Year 2020 Enforcement and Removal Operations Report*.

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participants has grown in recent years, from an average of less than 27,000 per day in fiscal year 2015 to an average of more than 90,000 per day at the end of fiscal year 2020, according to ICE documents.<sup>2</sup> In March 2020, ICE awarded a contract with a total value of \$2.2 billion to BI Incorporated to help implement the ATD program.<sup>3</sup>

In November 2014, we reported on the ATD program and found that ICE issued guidance to ERO field offices with recommended practices to help facilitate cost-effective use of the program.<sup>4</sup> However, we also found that ICE did not monitor the extent to which the ERO field offices consistently implemented the guidance. Additionally, ICE had established performance measures for the ATD program to, for example, assess participant compliance with requirements to appear in immigration court. However, ICE had not collected complete data for assessing progress against the measures. We made two recommendations to ICE in November 2014 to address these issues, which ICE subsequently implemented.

The explanatory statement accompanying the Consolidated Appropriations Act, 2020, includes a provision for us to conduct a review of the ATD program.<sup>5</sup> This report examines (1) what data show about participation in the ATD program, (2) the extent to which ICE has developed and implemented policies and procedures for managing the ATD program, (3) the extent to which ICE has assessed ATD program

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<sup>2</sup>Department of Homeland Security, *Congressional Budget Justification FY22* (2021); and *Congressional Budget Justification FY17* (2016).

<sup>3</sup>BI Incorporated is the full name of the company and is not an abbreviation.

<sup>4</sup>GAO, *Alternatives To Detention: Improved Data Collection and Analyses Needed to Better Assess Program Effectiveness*, [GAO-15-26](#) (Washington, D.C. Nov. 13, 2014).

<sup>5</sup>Explanatory Statement, 165 Cong. Rec. H10613, H11017 (daily ed. Dec. 17, 2019), accompanying Pub. L. No. 116-93, 133 Stat. 2317 (Dec. 20, 2019). The Secretary of Homeland Security was required to submit a report analyzing each active ATD program in the last 5 years to the Senate Appropriations Committee within 60 days of enactment (DHS report due by February 18, 2020). S. Rep. No. 116-125, at 56-57 (Sep. 26, 2019). We are required to review the reliability and accuracy of data in DHS's report and provide a preliminary briefing to the Committees on its review within 120 days of receipt of such report. We are also directed to conduct a review of ATD and report its findings to the Committees on the date agreed upon at the preliminary briefing. 165 Cong. Rec. at H11017. On April 11, 2022, DHS submitted its ATD report to us as required by the Explanatory Statement accompanying Public Law 116-93 and we have begun reviewing it.



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performance, and (4) how ICE manages and oversees the ATD program contractor.

To address all four objectives, we interviewed ICE officials from ERO's ATD Division (ATD headquarters), which is responsible for managing and overseeing ATD operations, and contractor officials responsible for overall management of the contractor's responsibilities. We also interviewed ERO and contractor officials in seven of 24 ERO field offices.<sup>6</sup> We purposefully selected these seven locations to include each type of ATD site; a range in the number of participants enrolled; geographic diversity; and participants who received enhanced case management services.<sup>7</sup> For each field office, we interviewed ATD monitoring officers who provide oversight and training in the field, ERO field officials assigned to the ATD program, and contractor officials who implement the program at ATD sites in the field office's area of responsibility. The information we obtained from these field interviews cannot be generalized to all ERO field offices, but provides insights and illustrative examples based upon a range of perspectives and experiences regarding implementation and oversight of the ATD program.

To address our first objective, we analyzed data from the ATD contractor's database to identify trends in program participation, including in enrollment; the types of ATD sites to which participants were assigned; participant countries of birth; and referrals for additional services. We analyzed data from November 1, 2014, when the contractor began using the database, through December 31, 2020, the most recent data available at the time of our request.<sup>8</sup> Additionally, we interviewed ERO field officials

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<sup>6</sup>Each of ERO's field offices oversees sub-offices located in its geographic area of responsibility, which may include all or part of a state or several states. At the time of our site selection, ERO had 24 field offices, but subsequently added a 25th field office in 2021. We interviewed ERO officials from the El Paso, Chicago, Miami, San Diego, San Francisco, Seattle, and Philadelphia field offices; as well as officials from sub-offices in these field offices' areas of responsibility.

<sup>7</sup>There are five types of ATD sites, which vary with respect to the scope of services the contractor provides and other factors. We discuss the site types and ATD's Extended Case Management Services program later in this report.

<sup>8</sup>To identify overall program trends, we analyzed data from the entire time period of November 1, 2014 through December 31, 2020. To identify trends by year, we focused our analysis on the time period for which we had full calendar years of data—2015 through 2020. We only included data on participants' most recent enrollments in our analysis if they were enrolled in the program more than once, except for in our analysis of re-enrollments.

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and contractor officials to obtain contextual information on trends in program data. We also interviewed representatives from four non-governmental organizations that provide clinical services for ATD participants regarding their experiences receiving referrals from the contractor and working with the program.<sup>9</sup>

To address our second objective, we reviewed ICE policies, procedures, and guidance for the ATD program, such as the ATD Handbook and related policy memos. We interviewed ATD headquarters officials about the development of these policies, and ERO field officials and ATD monitoring officers to determine the extent to which they use these policies to implement the program. In addition, we analyzed data related to changes in supervision levels of ATD participants and assessed this information against ICE guidance for reviewing changes in supervision levels. Specifically, we analyzed contractor data from January 1, 2018 through December 31, 2020 that showed the level of electronic monitoring technology assigned to new participants and any subsequent changes to the technology assigned (e.g. moving from a GPS ankle bracelet to a smartphone application).<sup>10</sup> We also assessed ICE's efforts to develop and implement policies and procedures for managing the program against internal control standards for monitoring internal control systems and using quality information.<sup>11</sup>

To address our third objective, we reviewed ICE documentation related to ATD program data and performance measurement, including documents describing past performance goals and methodologies for calculating program statistics. We also analyzed contractor data from November 1, 2014 through December 31, 2020 on court hearings and reasons participants were unenrolled from ATD that ICE uses to calculate program

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<sup>9</sup>As discussed later in this report, the contractor works with non-governmental organizations to provide clinical services and legal orientation presentations to ATD participants. We interviewed representatives from the four organizations the contractor identified as the primary ones it works with at a national level: Lutheran Social Services of the National Capital Area, Bethany Christian Services, U.S. Conference of Catholic Bishops, and Endeavors. The information we gathered through these interviews cannot be generalized to all the non-governmental organizations that work with ATD participants, but it provides useful perspectives on working with ICE and the contractor to offer services to ATD participants.

<sup>10</sup>We analyzed data beginning in calendar year 2018 because ICE issued guidance in 2017 that updated the recommended frequency of supervision reviews.

<sup>11</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington D.C.: September 2014).

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statistics, such as absconsion rates.<sup>12</sup> To assess how ICE externally reports absconsion rates, we reviewed relevant ICE documentation, congressional budget justifications, and performance reports. We also interviewed ICE officials in headquarters and field offices to understand how they collect and analyze program data to assess the ATD program. To assess ICE's efforts to measure ATD program performance, we reviewed principles for performance reporting in the *GPRRA Modernization Act of 2010* and important attributes of successful performance measures described in our prior work.<sup>13</sup>

To address our fourth objective, we reviewed the ATD program contract and related documentation describing requirements of the program contractor and how ICE is to manage and oversee the contractor. We also reviewed documentation of ICE's oversight activities, including examples of audits ERO field officials perform of the contractor's billing statements and a sample of weekly case file audits conducted by ATD officials at headquarters. Specifically, we analyzed the findings of 16 weekly case file audits conducted from February 1, 2021 through June 3, 2021.<sup>14</sup>

We also analyzed contractor data on attendance at legal orientation presentations for ATD participants enrolled on or after August 1, 2020, when a new contract began requiring the contractor to make

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<sup>12</sup>We selected this time frame for analysis to coincide when the contractor began using a new database and include the most recent data available at the time of our request. An ATD participant is considered to have absconded if the individual flees from their current address without any notification or forwarding information and cannot be located by the contractor or ERO.

<sup>13</sup>Government Performance and Results Act of 1993, Pub. L. No. 103-62, 107 Stat. 285, as updated by the *GPRRA Modernization Act of 2010*, Pub. L. No. 111-352, 124 Stat. 3866 (2011). While the *GPRRA Modernization Act of 2010* is applicable to the department or agency level, performance measures and goals are important management tools at all levels of an agency, including the program, project, or activity level. We have previously reported that performance measures and goals can serve as leading practices at various organizational levels. For example, see GAO, *Coast Guard: Actions Needed to Enhance Performance Information Transparency and Monitoring*, [GAO-18-13](#) (Washington, D.C.; Oct. 27, 2017). Our prior work describing important attributes of performance measures includes, among other reports, *Native American Youth: Agencies Incorporated Almost All Leading Practices When Assessing Grant Programs That Could Prevent or Address Delinquency*, [GAO-20-600](#) (Washington, D.C.: Aug. 6, 2020).

<sup>14</sup>This period encompassed case file audits that ICE had recently performed when it provided them to us in July 2021. The information we gathered through analyzing the audit findings cannot be generalized to all case file audits, but offers insight into the information ICE collects through the audits and how ICE records the information.

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presentations available to participants enrolled at certain ATD sites. We focused our analysis on participants who were assigned to those sites for more than 30 days between March 1, 2021, the month after the contractor began offering a recorded presentation, and October 31, 2021, the most recent month of data available at the time of our request.<sup>15</sup> We also interviewed ICE officials responsible for ATD contract oversight, including the Contracting Officer's Representative (COR) and other officials from ATD headquarters, ERO field officials, and ATD monitoring officers.<sup>16</sup> We compared ICE's contract oversight efforts against requirements for oversight in the ATD contract, DHS and ICE guidance on contract oversight, and internal control standards related to completing and documenting corrective actions to resolve deficiencies in a timely manner.<sup>17</sup>

To assess the reliability of the contractor data analyzed for all four objectives, we reviewed related documentation, such as data dictionaries; interviewed knowledgeable ERO and contractor officials; and reviewed the data to identify any errors or omissions. We found the data sufficiently reliable for our purposes of identifying trends in program participation and assessing ICE efforts to implement policies, assess program performance, and oversee the contract.

We conducted this performance audit from October 2020 to June 2022 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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<sup>15</sup>We restricted our analysis to participants who were assigned to contractor sites for at least 30 days because contractor officials stated that time may elapse between when an individual is enrolled at an ATD site and participates in a presentation.

<sup>16</sup>The COR is appointed by a Contracting Officer to monitor contract performance on their behalf.

<sup>17</sup>Department of Homeland Security, Office of the Chief Procurement Officer, *Contracting Officer Representative (COR) Guidebook* (October 2019); U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations, *Contracting Officer's Representative Supplement, Version 1.0* (October 2015); and [GAO-14-704G](#).

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## Background

### Immigration Court Removal Proceedings

For purposes of ATD program management, the immigration court proceedings process can be divided into three stages: (1) “pre-decision,” before an immigration judge issues a decision or otherwise disposes of a case; (2) “post-decision,” after an immigration judge issues a decision or other disposition; and (3) “appeal,” for those who seek administrative appeal of an immigration judge’s decision.

The pre-decision stage typically begins when DHS serves an individual with a charging document known as a “notice to appear” and files the notice with immigration court staff in the Department of Justice’s Executive Office for Immigration Review. The notice to appear orders the individual to appear before an immigration judge to respond to listed removal charges.<sup>18</sup> Upon issuance and filing of a notice to appear, immigration court staff schedule hearings where issues of removability and any applications for relief, such as asylum, are adjudicated. Attorneys with ICE’s Office of the Principal Legal Advisor represent the U.S. government by providing civil litigation services to ICE in removal proceedings. Counsel authorized to practice in removal proceedings may represent charged individuals at no expense to the government.<sup>19</sup>

The judge may ultimately decide to grant requested relief or issue an order of removal without any associated relief, among other outcomes.<sup>20</sup> An immigration judge may issue orders of removal in absentia for individuals who fail to attend a scheduled hearing.<sup>21</sup> After the immigration judge issues a decision or otherwise disposes of the case, the individual

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<sup>18</sup>Allegations of removability typically included in a notice to appear in immigration court are based on civil violations of U.S. immigration law, which would render a charged person statutorily inadmissible (if they have no prior lawful admission) or deportable (if they were previously lawfully admitted) and therefore subject to removal from the U.S. See 8 U.S.C. §§ 1182, 1227, 1229, 1229a. The lawfulness of a prior admission may be at issue in removal proceedings. See 8 U.S.C. §§ 1182(a)(6)(C)(i) (inadmissibility for having fraudulently obtained admission into the United States), 1227(a)(1)(A) (deportability for having been inadmissible at the time of entry).

<sup>19</sup>8 U.S.C. § 1362.

<sup>20</sup>A removal order becomes administratively final when all avenues for review or appeal through the Executive Office for Immigration Review have been exhausted or waived. See 8 C.F.R. § 1241.1.

<sup>21</sup>8 U.S.C. § 1229a(b)(5)(A).

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enters the post-decision stage of removal proceedings.<sup>22</sup> If an individual or DHS appeals the immigration judge's decision, the case enters the appeal stage and goes to the Executive Office of Immigration Review's Board of Immigration Appeals for further administrative review.<sup>23</sup>

ICE determines whether to detain individuals in its custody, on a discretionary or mandatory basis, or release them to the community while their removal proceedings are ongoing, subject to certain criteria.<sup>24</sup> Upon an individual's request, an immigration judge may conduct a hearing during which the judge may redetermine ICE's custody decision.<sup>25</sup> ICE uses one or more release options when it determines that an individual is not to be detained—including bond, order of recognizance, order of supervision, or on parole for urgent humanitarian reasons or significant public benefit—as shown in table 1. The ATD program serves as a supplemental requirement that may be added to one of these release options. Individuals enrolled in the ATD program receive more intensive supervision through case management and electronic monitoring than those released solely under other options.

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<sup>22</sup>After conclusion of proceedings, ICE is generally required to detain those who have an order of removal throughout the 90-day period after the order becomes administratively final. If an individual does not depart or is not removed within the 90-day removal period and is not detained, then they are to be subject to supervision pending removal. ATD program participants may remain in ATD after receiving an order of removal or may be temporarily detained subject to certain criteria while awaiting removal after the judge's order is made final.

<sup>23</sup>After exhausting administrative remedies within the Department of Justice, an individual may appeal a final order of removal to the U.S. Court of Appeals for the circuit in which the immigration judge completed the initial removal proceedings. For the purposes of ATD management and data, ICE considers a case as returning to the post-decision stage once the Board of Immigration Appeals has rendered a decision, including if the participant has a pending federal court appeal.

<sup>24</sup>DHS has broad statutory discretion (subject to certain legal standards) to detain, or release foreign nationals on bond, conditional parole, terms of supervision, or other conditions, depending on the circumstances and statutory basis for detention. The law requires DHS to detain particular categories of foreign nationals, such as those deemed inadmissible for certain criminal convictions or terrorist activity. See 8 U.S.C. §§ 1225, 1226, 1226a, 1231; 8 C.F.R. § 236.1.

<sup>25</sup>Regarding custody redetermination by an immigration judge, see 8 C.F.R. §§ 1003.19 (custody/bond), 1236.1 (apprehension, custody, and detention).

**Table 1: Release Options for Foreign Nationals**

Release option	Description
Bond	If individuals are not a threat to public safety, present a low risk of flight, and are not required to be detained, U.S. Immigration and Customs Enforcement (ICE) may release them on a bond of at least \$1,500. <sup>a</sup>
Order of recognizance	If individuals are not a threat to public safety, present a low risk of flight, and are not required to be detained, an order of recognizance requires they abide by specified release conditions but does not require them to post a bond. <sup>a</sup>
Order of supervision	ICE may release individuals on orders of supervision, despite them being subject to a final order of removal, where there is no significant likelihood of removal in the reasonably foreseeable future, because, for example, they are unable to obtain passports or other travel documents to return to their country of origin. <sup>b</sup>
Parole	ICE may release certain individuals on parole for urgent humanitarian reasons or significant public benefit, such as for a medical emergency or legitimate law enforcement objective, on a case-by-case basis. Parole constitutes temporary permission to enter the U.S. without admission. <sup>c</sup>

Source: GAO analysis of statute and ICE information. | GAO-22-104529

<sup>a</sup>See 8 U.S.C. § 1226; 8 C.F.R. § 236.1. The Department of Homeland Security (DHS) may set a bond, which may also be used in conjunction with other release conditions, such as placement in the Alternatives to Detention program. Upon the foreign national's request, an immigration judge may redetermine the amount of bond set by DHS. 8 C.F.R. § 1236.1(d)(1).

<sup>b</sup>See 8 U.S.C. § 1231; 8 C.F.R. §§ 241.1, 241.4, 241.5, 241.13, 241.14. ICE officers determine the frequency with which foreign nationals released on an order of supervision must report to ICE.

<sup>c</sup>See 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. §§ 212.5, 235.3(b)(2)(iii).

According to ICE guidance, any individual who is placed in immigration court removal proceedings and released from custody is to be referred to the ATD program for potential enrollment. Other offices within ICE, such as the Criminal Apprehension Program or Homeland Security Investigations, or other DHS entities, such as U.S. Border Patrol, may refer an individual for potential enrollment in the ATD program.<sup>26</sup> Other federal, state, and local law enforcement agencies, or an immigration judge as a condition of release, may also refer individuals for potential enrollment. The ATD program is then to determine whether the individual

<sup>26</sup>The Criminal Apprehension Program provides direction and support across ICE in the identification, arrest, and removal of priority foreign nationals who are incarcerated and criminal foreign nationals at-large. Homeland Security Investigations is responsible for investigating terrorist, transnational, and other criminal organizations. Beginning in July 2021, U.S. Border Patrol has paroled into the U.S. some family unit members apprehended at the southwest border and referred them to ICE to enroll heads of households of those family units into ATD (while releasing the rest of the household on parole without being enrolled in ATD). We have ongoing work reviewing this use of parole—referred to as Parole Plus ATD—and plan to report on the results of the work later this year.

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is eligible for enrollment and whether participation in ATD would be a reasonable supplemental condition of release.

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## Overview of the ATD Program

ICE established the ATD program in 2004 to provide an alternative to detention for individuals of foreign nationality over the age of 18 who are not subject to mandatory detention and who are awaiting a final resolution to their immigration court removal proceedings. ICE's fiscal year 2021 appropriation provided approximately \$440.1 million for ATD. This represented an increase of \$110 million over the President's budget request to expand ATD and for related case management services.<sup>27</sup> The program aims to use case management and monitoring technology to ensure compliance with program requirements, court appearances, and final orders issued by immigration judges while allowing participants to remain in their communities. Within ICE, ERO administers the program in conjunction with a contractor that provides case management and technology monitoring services for ATD participants at 242 sites across the country.<sup>28</sup> ERO field officials make enrollment decisions and assign the level of supervision and monitoring that each ATD participant is to receive. In most cases, contractor case specialists perform case management and supervision as assigned. The ATD program also includes access to additional supervision and support services for particularly vulnerable participants.

## Organizational Structure

Several ERO offices are involved in managing, overseeing, and implementing the ATD program, as shown in figure 1. At ICE headquarters, the ATD Division is located within ERO's Non-Detained Management Division. ATD headquarters officials make programmatic decisions, issue policies and procedures, and oversee operations. Additionally, there are quality assurance officials within ATD headquarters responsible for overseeing the contractor's performance. Each of ERO's field offices is generally assigned at least one ATD monitoring officer who is located in the field but reports to ATD headquarters, and is to provide

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<sup>27</sup>The net increase above the request taking into account reductions is approximately \$86.2 million. Adjustments from the request are an increase of \$85 million to expand ATD; an increase of \$25 million to expand participation in case management services provided by nongovernmental organizations and community partners; a reduction of approximately \$1.8 million for personnel cost adjustments; and a reduction of approximately \$22 million associated with proposed hiring. See 2021 Explanatory Statement, 166 Cong. Rec. H8311, H8471-2 (daily ed. Dec. 21, 2020).

<sup>28</sup>ICE has contracted with BI Incorporated since the program began in 2004. The contract is currently in its fourth iteration. The number of ATD sites is the total number of active sites as of the end of fiscal year 2021.



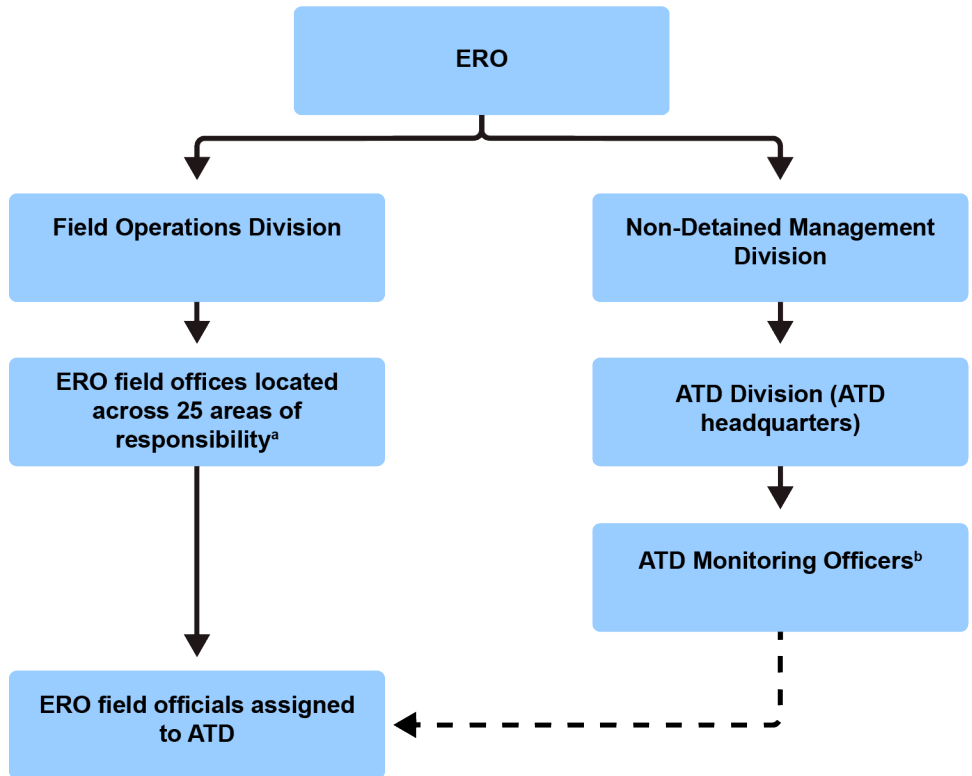
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oversight and training to field officials and contractor officials who implement the program at the local level.<sup>29</sup> ERO officials located across field offices are assigned to manage ATD cases on a rotating basis. These officials decide whether to enroll eligible individuals into the program. They also assess and determine participants' assigned level of supervision, such as the type of monitoring technology used, and when to unenroll participants. ERO field officials are to determine the level of supervision and technology assigned to an individual based on several factors, such as individuals' immigration status, criminal history, and whether they have been complying with program requirements, if already enrolled. Once ERO field officials decide to enroll individuals into the ATD program, they assign participants to an ATD site based on where the participants establish residency.

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<sup>29</sup>The Buffalo field office has not had an ATD monitoring officer assigned since 2018 due to the limited number of ATD sites in its area of responsibility. Some field offices may have more than one ATD monitoring officer who may focus on particular program priorities. Additionally, there are ATD monitoring officers assigned to oversee and manage ATD's Extended Case Management Services, which provides additional supervision to certain ATD participants.

**Figure 1: Enforcement and Removal Operations (ERO) Offices Responsible for Managing, Overseeing, and Implementing the Alternatives to Detention (ATD) Program**



Source: : GAO analysis of U.S. Immigration and Customs Enforcement documentation. | GAO-22-104529

<sup>a</sup>At the start of our audit work, ERO had field offices located across 24 areas of responsibility. ERO created a 25th field office in July 2021, which became operational in October 2021.

<sup>b</sup>ATD Monitoring Officers are ATD headquarters employees located in ERO field offices.

## Site Types and Locations

ERO field officials and contractor case specialists implement the ATD program at sites across the country. There are five types of ATD sites, as shown in table 2, where participants receive either case management services, electronic monitoring, or both. At sites with contractor case specialists—staging, contractor, and government sites—the case specialists carry out the case management and monitoring tasks as directed by ERO field officials. At technology-only sites, ERO field officials conduct electronic monitoring of participants using the contractor’s monitoring equipment, but the contractor does not provide case management services. At maintenance sites, contractor case specialists conduct more limited electronic monitoring and escalate issues as needed to ERO field officials. The ATD program established maintenance

sites as a pilot in December 2020 to provide lower cost monitoring of participants with a history of compliance.

**Table 2: Types of U.S. Immigration and Customs Enforcement (ICE) Alternatives to Detention (ATD) Program Sites**

Site type	Description	Number of sites as of end of fiscal year 2021
Staging	Staging sites are generally located along the U.S. southwest border. At staging sites, contractor case specialists or ICE Enforcement and Removal Operations (ERO) officials perform initial enrollments for new participants and use technology as directed by ERO officials to monitor them as they travel to their final location within the U.S.	29
Contractor	Contractor case specialists at contractor sites perform a full enrollment for ATD participants and develop an individualized service plan to provide both electronic monitoring and case management services, as directed by ERO officials.	54
Government	At government sites, one or two contractor case specialists provide both electronic monitoring and case management services, similar to contractor sites. However, government sites are located at ERO offices.	31
Technology-only	At technology-only sites, ERO field officials electronically monitor participants remotely, such as through GPS, and do not provide case management services. ERO field officials may request the contractor monitor these participants' immigration court hearing schedules and attendance.	112
Maintenance	Maintenance sites are part of a pilot that began in December 2020 where contractor case specialists and ERO field officials provide more limited electronic monitoring of participants with a history of compliance. ERO field officials may request the contractor monitor these participants' immigration court hearing schedules and attendance.	16
<b>Total</b>		<b>242</b>

Source: ICE data and GAO analysis of ICE documentation. | GAO-22-104529










**Types of Monitoring Technology**

- GPS ankle bracelet: uses GPS, Wi-Fi, and cellular technology to track the participant's location. The devices have anti-tamper features and can send alerts to the contractor.
- Smartphone application: identifies participants through facial matching against an image taken during enrollment and has limited location tracking capabilities. The application also supports messaging and video conferencing with contractor officials.
- Telephonic reporting: a voice-recognition system calls participants monthly to verify their identities and locations and supports 35 languages.

Source: GAO analysis of U.S. Immigration and Customs Enforcement and contractor information. | GAO-22-104529

For participants ERO assigns to contractor or government sites, the contractor is to (1) complete an enrollment and orientation for each participant to provide an overview of the program, including its rules and consequences for violating them, (2) explain the assigned monitoring technology, and (3) record participant information into the contractor's database. The contractor is also to develop an individual service plan that lays out the monitoring technology and case management services assigned to the individual by ERO. These can include in-person check-ins through home or office visits, tracking and informing participants of their scheduled court appearances, and assessing whether to offer referrals to participants and their families for outside assistance. The monitoring technology includes options for GPS ankle bracelets, a smartphone application with facial matching capabilities, and telephonic reporting using voice recognition (see sidebar). Figure 2 shows the types of supervision and monitoring available at the different site types.

**Figure 2: Types of Supervision and Monitoring Available at Alternatives to Detention (ATD) Sites**

	Type of ATD site				
	Contractor	Government	Staging	Technology	Maintenance
 <b>Court tracking:</b> the contractor tracks ATD participants' hearing schedules and attendance	✓	✓	✓ <sup>a</sup>	✓ <sup>b</sup>	✓ <sup>b</sup>
 <b>Home visits:</b> the contractor visits participants' homes at scheduled times to discuss case information and look for evidence of flight risk	✓	✓			
 <b>Office visits:</b> ATD participants meet with the contractor at the site location to discuss case information	✓	✓			
 <b>Residence verification:</b> the contractor visits ATD participants' homes within 48 hours of enrollment or change of address to verify the address	✓	✓			
 <b>Community referral coordination:</b> the contractor assesses whether ATD participants need referrals to outside services, such as food assistance or medical care	✓	✓			
 <b>Legal orientation presentation:</b> ATD participants attend a presentation describing the immigration court process and their legal rights	✓ <sup>c</sup>				
 <b>Electronic monitoring:</b> ATD participants are assigned monitoring technology, such as GPS units or voice recognition software	✓	✓	✓	✓	✓
 <b>Alert management:</b> the contractor or Enforcement and Removal Operations (ERO) officials monitor and respond to alerts regarding the status of electronic monitoring technology	✓	✓	✓	✓	✓
 <b>Extended Case Management Services:</b> the contractor provides increased supervision for certain ATD participants with significant vulnerabilities intended to ensure program compliance	✓				

Source: GAO analysis of U.S. Immigration and Customs Enforcement documentation. | GAO-22-104529

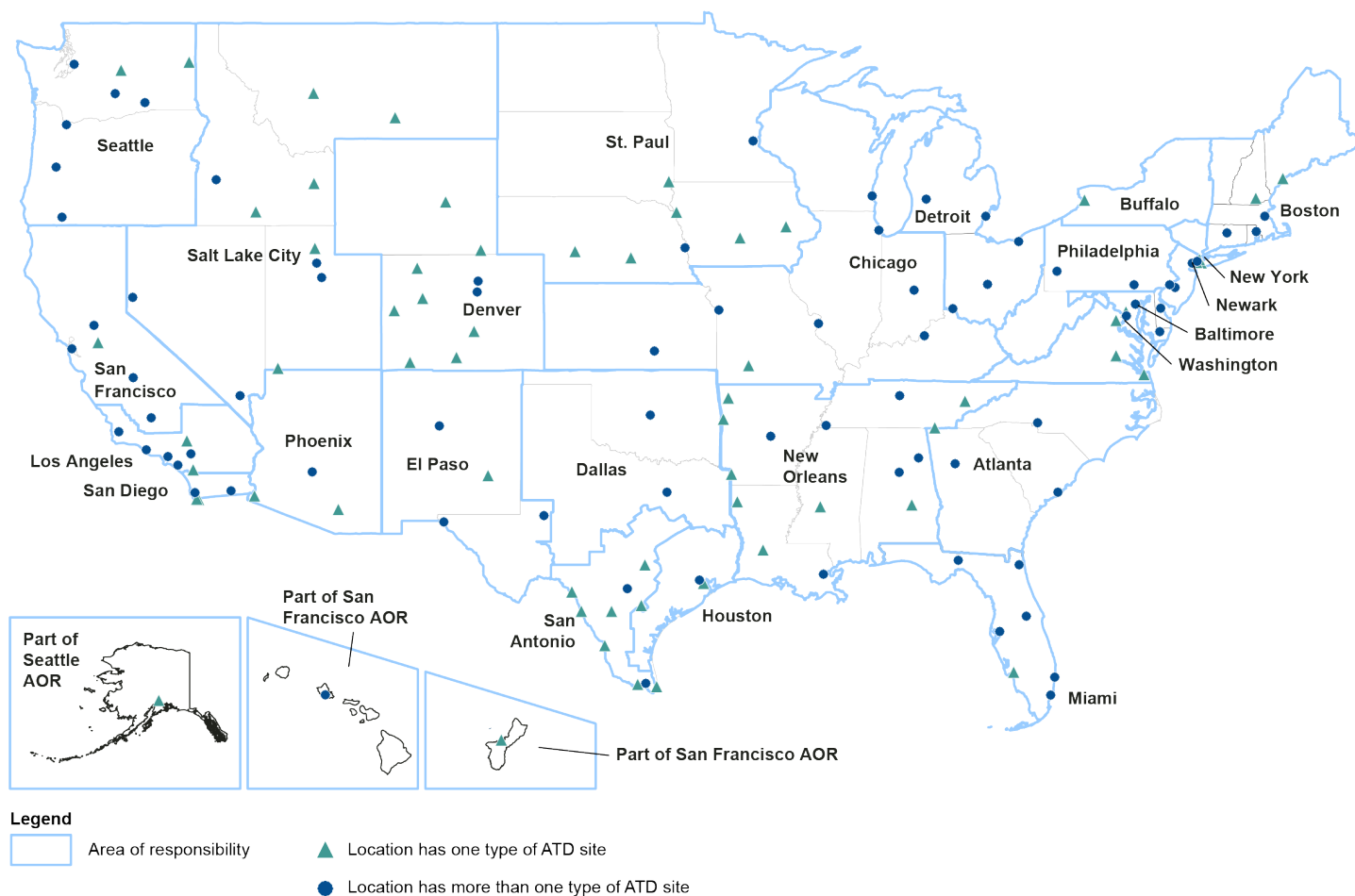
<sup>a</sup>Contractor and ERO officials told us that while staging site participants are technically eligible for court tracking, it is not typically part of the service plan for those participants, as they are meant to be in transit to another location.

<sup>b</sup>Technology-only and maintenance sites do not have contractor officials, but ERO officials may ask the contractor to provide court tracking for ATD participants at these sites.

<sup>c</sup>The contractor is only required to provide legal orientation presentations to ATD participants at contractor sites. However, contractor officials told us in February 2022 that the contractor had begun sending links to a recorded presentation to ATD participants at government sites as well as contractor sites.

ATD program sites are spread across the nation throughout ERO field offices' geographic areas of responsibility. Figure 3 shows their distribution as of the end of fiscal year 2021.

**Figure 3: Alternatives to Detention (ATD) Site Types by Enforcement and Removal Operations Field Office Areas of Responsibility (AOR), Fiscal Year 2021**



Source: GAO analysis of U.S. Immigration and Customs Enforcement documentation | GAO-22-104529

Note: ERO established a 25th field office that became operational in October 2021—after our period of analysis—that is not included in the figure.

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## Additional Supervision and Service Options

Upon enrollment into the ATD program, the contractor is to assess participants to determine whether they may need enhanced case management options or referrals for community services, if ERO assigned participants to contractor or government sites. For example, the ATD program has an option for increased contact with contractor case specialists for those who may need additional support through Extended Case Management Services (ECMS) at contractor sites. The ECMS program began with a contract modification in April 2018 after the conclusion of an earlier pilot serving families within ATD. Participants assigned to ECMS work with case specialists trained in providing enhanced services and are to receive a minimum of six contacts with the case specialist per month. Besides meeting more frequently with ECMS participants, case specialists are to evaluate participants' need for community resources, such as medical treatment or food assistance.

ATD participants not enrolled in ECMS may also have options for accessing outside support services. If case specialists at contractor or government sites determine ATD participants have a need for such services, they are to provide them with appropriate referrals to local non-governmental organizations for pro bono services. In addition, the contractor can refer participants at contractor and government sites for clinical services through ATD's Wraparound Stabilization Services program. In this program, the contractor partners with non-governmental organizations to provide clinical services such as mental health and trauma counseling, family therapy, and human trafficking screening and education.<sup>30</sup>

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<sup>30</sup>According to the 2021 Explanatory Statement, \$5 million is to be transferred from DHS's Office of Secretary and Executive Management to the Federal Emergency Management Agency for administration of a new ATD case management grant pilot program. The program is to be managed by a national board with grants expertise support from the Federal Emergency Management Agency. 166 Cong. Rec. at H8468, H8472 (daily ed. Dec. 21, 2020). According to an August 2021 DHS announcement, DHS's Office for Civil Rights and Civil Liberties will chair a national board of non-governmental organizations and local governments to administer the case management program. According to this announcement, the program is intended to provide services such as mental health services, human and sex trafficking screening, legal and cultural orientation programs, and departure and reintegration services for ATD participants returning to their home countries. As of February 2022, three non-governmental organizations had begun serving on the national board and working with DHS to stand up the program, which is to establish the funding mechanism for the board and work with local service providers, among other things.

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## ATD Enrollment Generally Increased and Most Participants Were from Central America

Enrollment More Than Doubled from 2015 through 2020 and Most Participants Were Unenrolled Before Their Immigration Proceedings Concluded

Our analysis of ICE contractor data found that enrollment in ATD generally increased from 2015 through 2020. Over three-quarters of participants were unenrolled from the program before their immigration proceedings concluded. About half of participants unenrolled from the program were placed on conditions of release outside the ATD program, such as being monitored by ERO field officials not assigned to ATD.

Number of Enrollments

Our analysis of ICE contractor data from 2015 through 2020 showed that the number of newly enrolled participants in the ATD program more than doubled from approximately 53,000 participants in 2015 to 111,000 participants in 2020, as shown in figure 4. From 2015 through 2019, the number of newly enrolled participants increased each year, with a high of approximately 166,000 participants in 2019. Officials we interviewed from all seven ERO field offices said that the increase in ATD over this time period was driven, in part, by surges in the number of foreign nationals crossing the southwest border. ERO field officials also indicated that the COVID-19 pandemic in 2020 affected the ATD program in various ways that contributed to reduced enrollment numbers. For example, officials from one field office stated that COVID-19-related restrictions on the number of in-person interactions between contractor officials and participants slowed down the enrollment process. Furthermore, many foreign nationals who may have otherwise been placed in removal proceedings and eligible for enrollment in the ATD program were expelled

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without proceedings pursuant to a March 2020 order of the Centers for Disease Control and Prevention.<sup>31</sup>

In addition, our analysis showed that the number of instances in which individuals were unenrolled from ATD—referred to as “unenrollments” in this report—increased from about 13,000 in 2015 to about 74,000 in 2019 before dropping sharply to about 25,000 in 2020.<sup>32</sup> We further discuss reasons for unenrollment later in this report.

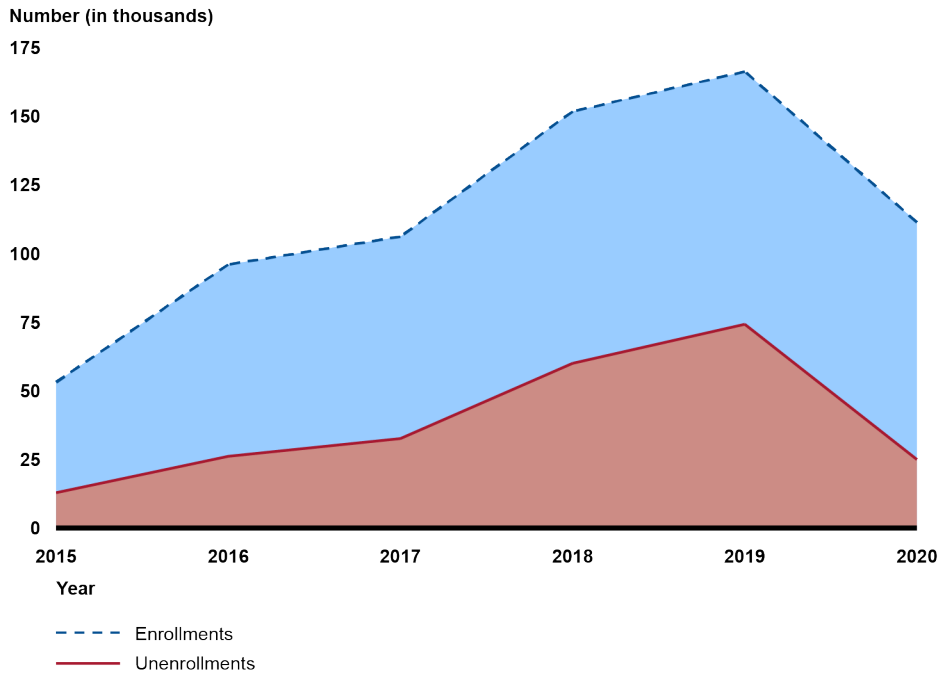
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<sup>31</sup>According to data U.S. Customs and Border Protection publicly reported, it turned back approximately 1 million foreign nationals at U.S. land borders by the end of fiscal year 2021 under this order. Not all of these foreign nationals would likely have been eligible for the ATD program, however. See Public Health Reassessment and Order Suspending the Right To Introduce Certain Persons From Countries Where a Quarantinable Communicable Disease Exists, 86 Fed. Reg. 42,828 (Aug. 2, 2021) (published Aug. 5), stemming from a since superseded March 2020 CDC Order. See Notice of Order Under Sections 362 and 365 of the Public Health Service Act Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists, 85 Fed. Reg. 17,060 (Mar. 20, 2020) (published Mar. 26); and Order Suspending Introduction of Persons From a Country Where a Communicable Disease Exists, 85 Fed. Reg. 16,567 (Mar. 20, 2020) (published Mar. 2). In April 2022, a Louisiana federal district court issued a temporary restraining order prohibiting the government from implementing its order to discontinue Title 42 expulsions at the border. On May 11, the court extended the temporary restraining order; and on May 20, the court granted the Plaintiff states’ motion for a preliminary injunction to prevent the government from ending title 42 expulsions pending a final decision in the case. Louisiana v. CDC, No. 22-cv-00885, Memorandum Ruling Granting Plaintiff States’ Motion for a Preliminary Injunction, Doc. 90 (W.D. La. May 20, 2022). This case is now on appeal before the Fifth Circuit U.S. Court of Appeals. Louisiana v. CDC, No. 22-30303 (5th Cir. May 23, 2022).

<sup>32</sup>Precise enrollment and unenrollment numbers are included in the figure note for figure 4.



**Figure 4: Enrollments and Unenrollments of Alternatives to Detention Program Participants, 2015-2020**



Source: GAO analysis of U.S. Immigration and Customs Enforcement contractor data. | GAO-22-104529

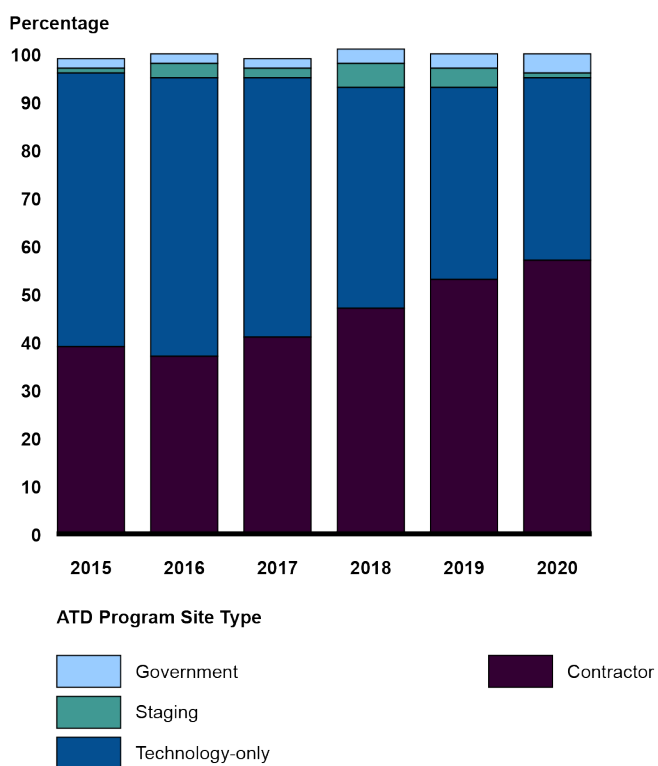
Note: The total number of enrollments per year was 53,131 in 2015, 96,023 in 2016, 106,233 in 2017, 151,796 in 2018, 166,316 in 2019, and 111,477 in 2020. The total number of unenrollments per year was 12,875 in 2015, 26,140 in 2016, 32,604 in 2017, 60,018 in 2018, 74,242 in 2019, and 24,975 in 2020.

## Enrollments by Site Type

From 2015 through 2020, ERO assigned most participants to either contractor or technology-only ATD program sites, with 95 percent of participants in 2020 assigned to one of these two site types. ERO assigned a smaller proportion of participants to staging, government, or maintenance sites. ATD headquarters officials explained that contractor sites provide higher levels of supervision, and ICE may transfer participants to technology-only sites once they have demonstrated compliance with program requirements. As previously discussed, ATD participants enrolled at contractor sites receive monitoring from case specialists, often through home and office visits, whereas ERO field officials monitor participants assigned to technology-only sites with no in-person case management by the contractor. According to our analysis, there was a shift in the proportion of participants assigned to contractor and technology-only sites in recent years, as shown in figure 5. In 2015, the majority of participants—57 percent (30,459)—were assigned to technology-only sites. However, this percentage decreased starting in

2017. By 2020, ERO assigned about 38 percent (42,574) of participants to technology-only sites. As this percentage decreased, the percentage assigned to contractor sites increased, from 39 percent (20,819) in 2015 to 57 percent (63,217) in 2020.

**Figure 5: Percentage of Alternatives to Detention (ATD) Participants Enrolled at ATD Site Types, 2015-2020**



Source: GAO analysis of U.S. Immigration and Customs Enforcement contractor data. | GAO-22-104529

Notes: ATD began a maintenance site pilot program, in which certain participants receive limited monitoring, in December 2020. Because the pilot was active for less than a month during our period of analysis, this figure excludes maintenance site participants. Enforcement and Removal Operations may reassign participants to different types of sites throughout their participation in ATD. These data show the site type in which participants were most recently enrolled as of when the data were extracted in May 2021. The total number of participants enrolled at all ATD site types per year was 53,131 in 2015, 96,023 in 2016, 106,233 in 2017, 151,796 in 2018, 166,316 in 2019, and 111,477 in 2020.

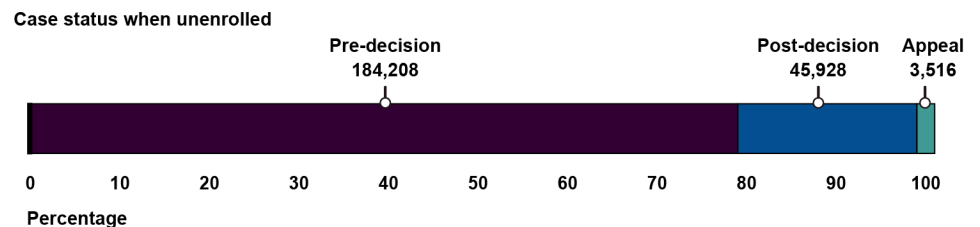
ATD headquarters officials attributed the rise in contractor site assignments to a combination of two factors: (1) an ATD headquarters policy recommendation that new participants be assigned to a contractor site when possible, where case specialists could provide a higher level of

Timing and Reasons for Unenrollment

supervision; and (2) increases in new participants resulting from surges in foreign nationals without valid travel documents seeking entry at the border.<sup>33</sup> For example, officials from one ERO field office said they typically assign new participants to contractor sites and then may transfer them to a technology-only site once they have demonstrated compliance. Officials from another field office said they prefer to use their technology-only sites as back-up options for when their contractor sites are at enrollment capacity.

From November 2014 through December 2020, our analysis showed that ERO unenrolled the majority of ATD participants—79 percent—from the program during the pre-decision stage of their proceedings. This means that the ATD program did not monitor them through the entire lifecycle of their immigration removal proceedings. Additionally, ERO did not later re-enroll most participants it unenrolled from ATD. Only about 3 percent of participants were re-enrolled after being unenrolled. On average, ATD participants remained in the program for just over a year (389 days). ICE officials said that the immigration removal process can take years, and that it is often not cost-effective to keep participants who comply with the terms of their release in the ATD program for the full duration of their removal proceedings.<sup>34</sup> Figure 6 shows the status of participants’ immigration court cases when ERO unenrolled them from the ATD program.

**Figure 6: Immigration Court Case Status of Alternatives to Detention (ATD) Participants When Unenrolled, November 2014-December 2020**



Source: GAO analysis of U.S. Immigration and Customs Enforcement contractor data. | GAO-22-104529

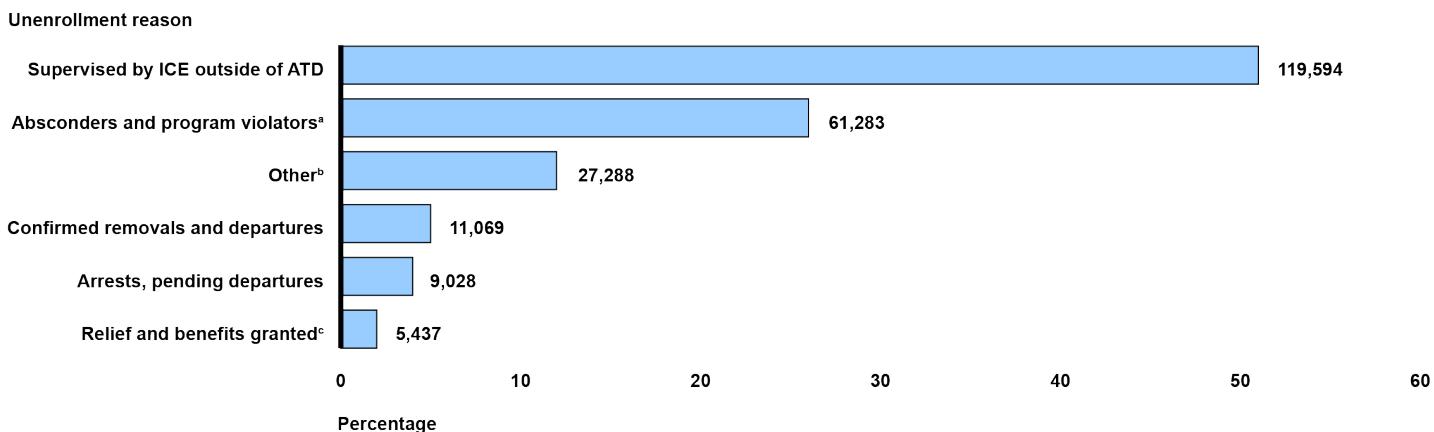
<sup>33</sup>We further discuss ATD headquarters policy and guidance related to supervision levels later in this report.

<sup>34</sup>For more information about pending caseloads in the immigration court system, see GAO, *COVID-19: Improvements Needed in Guidance and Stakeholder Engagement for Immigration Courts*, [GAO-21-104404](#) (Washington, D.C.: Aug. 31, 2021); and *Immigration Courts: Actions Needed to Reduce Case Backlog and Address Long-Standing Management and Operational Challenges*, [GAO-17-438](#) (Washington, D.C.: June 1, 2017).

Notes: Participants with a case status of “pre-decision” have not yet received a decision resolving their removability and eligibility for any requested relief or protection from removal, or otherwise disposing of their case, from an immigration judge. A participant may or may not have attended their scheduled hearings prior to a decision being made. Participants with a case status of “post-decision” have received a decision resolving their case, including approval of an application for relief or an order of removal, among other dispositions, from an immigration judge. Participants with a case status of “appeal” chose to appeal the decision of the immigration judge to the Board of Immigration Appeals and remain under U.S. Immigration and Customs Enforcement (ICE) supervision while their appeal is underway. For the purposes of ATD management and data, ICE considers a case as returning to the post-decision stage once the Board of Immigration Appeals renders a decision, including if the participant has a pending federal court appeal.

As shown in figure 7, our analysis of data on reasons ERO unenrolled ATD participants from the program showed that it unenrolled most participants (51 percent) to place them on other conditions of release outside of ATD, such as being supervised without electronic monitoring by ERO field officials not assigned to ATD. In about a quarter of cases (26 percent), ERO unenrolled participants due to participants absconding while in the program, meaning neither the contractor nor ERO could locate them, or because they did not comply with program requirements. For those who absconded, the median length of time between enrolling in the program and ERO unenrolling them was about 6 months (184 days). ERO unenrolled the remaining 23 percent of participants for other reasons, including being granted a benefit or relief in their immigration proceedings or departing the country voluntarily or under a final order of removal.

**Figure 7: Reasons for Unenrollment from the U.S. Immigration and Customs Enforcement (ICE) Alternatives to Detention (ATD) Program, November 2014-December 2020**



Source: GAO analysis of U.S. Immigration and Customs Enforcement contractor data. | GAO-22-104529

<sup>a</sup>Enforcement and Removal Operations (ERO) considers an ATD participant to have absconded if the individual flees from their current address without any notification or forwarding information and cannot be located by the contractor or ERO.

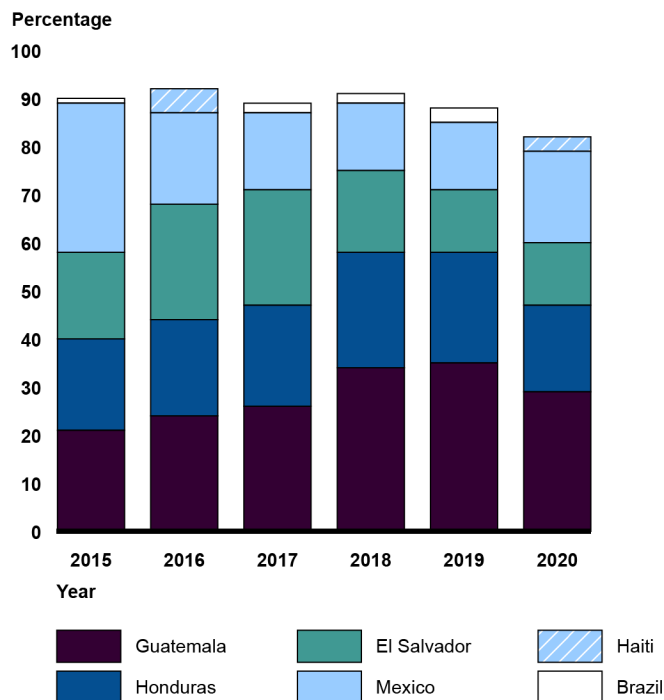
<sup>b</sup>Other includes participants who were unenrolled because they were granted temporary protected status, their immigration court proceedings were terminated or administratively closed, or they were otherwise determined to no longer be required to participate in the ATD program.

<sup>c</sup>Relief and benefits granted means that an immigration judge granted the individual relief or protection from removal. See 8 U.S.C. sec. 1229a(c)(4).

## The Majority of ATD Participants Were from Central America

Our analysis of ICE contractor data showed that the majority of ATD participants enrolled from November 2014 through December 2020 were from Central America—at least 58 percent each year with a high of 75 percent in 2018. Most Central American participants were from three countries: Guatemala, Honduras, and El Salvador. The other top five most common countries of origin for ATD participants each year included Mexico and either Brazil or Haiti, as shown in figure 8.

**Figure 8: Top Five Countries of Birth per Year for Alternatives to Detention Participants Enrolled 2015-2020**



Source: GAO analysis of U.S. Immigration and Customs Enforcement contractor data. | GAO-22-104529

Note: The total number of participants from the top five countries of birth each year were as follows: 47,672 in 2015, 87,493 in 2016, 94,774 in 2017, 137,432 in 2018, 148,018 in 2019, and 92,617 in 2020.

Officials at four of seven ERO field offices we spoke with said they had seen an influx of migrants coming from Central America over this time

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period. Officials from six of seven field offices also mentioned increases in ATD participants in their specific field offices' areas of responsibility coming from other countries such as Cuba, Romania, China, India, and Russia. Additionally, officials from five out of seven field offices said they had seen an increase in the number of foreign nationals arriving as members of family units from 2015 through 2020.<sup>35</sup>

Our analysis also showed that the average age of participants was 32 years old. Also, 54 percent of the participants were women, 46 percent were men, and less than 1 percent were transgender.<sup>36</sup> Less than 1 percent of participants were recorded as having a physical or mental disability.

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### ATD Provided Extended Case Management and Offered Additional Services to Some Participants

Our analysis of ICE contractor data showed that ATD provided enhanced case management and referrals for additional services to some participants. The ATD program contractor is required to assess each ATD participant at contractor sites for ECMS services as a part of the enrollment process. Case specialists are to refer individuals who may need enhanced supervision for participation in ECMS to an ATD monitoring officer dedicated to the ECMS program who decides whether to enroll them. According to contractor data, 2,010 individuals participated in the ECMS program from its inception in July 2018 through the end of 2020. Of the 1,556 participants enrolled in ECMS as of May 2021, the majority—79 percent—were women, and about half of ECMS participants had at least one dependent. Additionally, ERO had not assigned any monitoring technology, such as a GPS ankle bracelet or a smartphone application with facial matching capabilities, for about 91 percent of those enrolled in ECMS as of May 2021. Contractor officials stated that reasons they may recommend an ATD participant for ECMS include trauma, serious medical issues (such as having cancer), having foreign national dependents, and significant financial hardship.

Additionally, as previously discussed, all ATD participants at contractor and government sites are eligible to receive referrals from contractor case specialists to local nongovernmental organizations for pro bono services. As shown in figure 9, from November 2014 through December 2020, case specialists provided ATD participants with referrals for services including

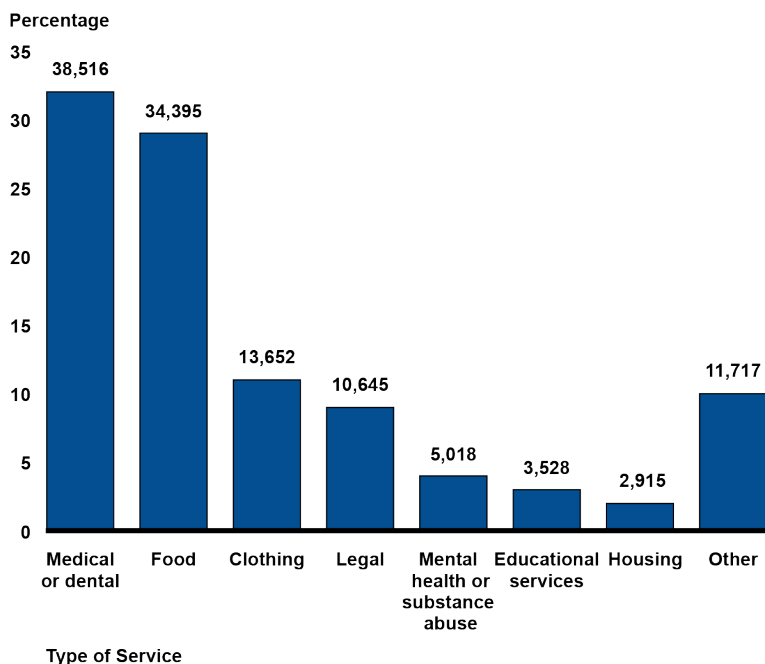
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<sup>35</sup>We were unable to analyze data on family units because the contractor's database does not indicate whether ATD participants are members of family units, with the exception of recording dependents for ECMS participants.

<sup>36</sup>Percentages do not sum to 100 due to rounding.

food and clothing assistance, medical and dental care, help finding housing, legal aid, and mental health or substance abuse services.

**Figure 9: Types of Community-based Service Referrals Given to Alternatives to Detention (ATD) Participants, November 2014-December 2020**



Source: GAO analysis of U.S. Immigration and Customs Enforcement contractor data. | GAO-22-104529

Note: “Other” includes referrals for childcare, language services, employment services, and community and reintegration services. Individual ATD participants may receive multiple service referrals. Only participants enrolled at contractor and government sites are eligible for these referrals.

Over this time period, contractor officials provided about 120,400 referrals for community services to ATD participants at contractor and government sites. According to ICE contractor data, as of May 2021, ATD participants had used 29 percent of these referrals, had not used 63 percent, and 8 percent were pending—meaning that the contractor provided the referral but did not know if the participant had used it. ATD officials said that participants are not required to use these referrals and that sometimes the community providers do not have the staff available to provide services for all of the referrals made. ATD officials also stated that contractor case specialists can gather information from the participant during home and office visits about whether they have a need for referrals or are using referrals already provided.

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In more recent years, ATD participants also received services through the Wraparound Stabilization Services program. According to contractor officials, this program began as a pilot program in September 2019 for ATD participants who needed more intensive services than could previously be provided through existing means. ICE extended the program through contract modifications before including it in the current ATD contract that started August 2020. Contractor officials said that the COVID-19 pandemic made it difficult to make a high volume of referrals, but that they began making more referrals in 2021. Specifically, as of July 2021, they were working with nongovernmental organizations to expand the range of services offered to include services such as repatriation and reintegration services for those who have received final orders of removal.<sup>37</sup>

Representatives we spoke with from four nongovernmental organizations that provide services to ATD participants through the Wraparound Stabilization Services program identified some areas in which they are working with the contractor and ICE to improve program operations. For example, representatives from all four of these organizations said that the referral process when the program was established slowed down the provision of services because ICE had to approve each referral before they could provide services. However, these organizations said, and the contractor confirmed, that the process changed so that ICE is no longer required to approve all referrals. For example, a contract modification signed in April 2021 eliminated the requirement for ICE to approve referrals for mental health screenings and contractor officials said that they interpret this to mean that all ATD participants are eligible for mental health screenings.

Representatives from all four organizations said they experienced issues with continuity of care when participants are unenrolled from ATD without advance notice and can no longer receive services through Wraparound Stabilization Services. Representatives from three of the organizations added that they try to mitigate this issue by looking for ways to continue to provide them with services under their own funding streams when possible. Subsequent to our interviews with the nongovernmental organizations, the contractor began notifying providers by email within a

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<sup>37</sup>According to the contractor, these services are voluntary for participants and are to include developing individualized departure plans, providing psychosocial support to families as they complete tasks to implement departure plans, and connecting participants with resources in their country of origin.



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few days of participants being transferred to another location or unenrolled from ATD to help address this issue.

Appendix I provides additional data on participants who absconded from the program, the number of participants enrolled by geographic area, and the number of contractor referrals to community service providers by year.

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## ICE Developed ATD Policies, but Does Not Monitor Implementation of Supervision Policy

### ICE Developed Policies and Procedures for the ATD Program that Officials Described Taking Steps to Implement

ICE has developed policies and procedures to guide the ATD program, and ERO officials we interviewed described taking steps to implement them. In particular, ATD headquarters has developed and disseminated policies and procedures for ERO field officials to follow when administering the program in their respective field offices' areas of responsibility. The ATD Handbook, published in 2017, outlines these policies and procedures, which ATD headquarters officials stated they consider the program's standard operating procedure.<sup>38</sup> Since 2017, ATD has disseminated additional memos, as needed, to update program policies and procedures. For example, a policy memo distributed in 2018 described a new supervision technology that uses an application loaded on participants' smartphones that has limited tracking capabilities as an alternative to GPS ankle bracelets and directed ERO field officials to transfer participants to the technology when suitable.<sup>39</sup> The ATD

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<sup>38</sup>Department of Homeland Security, U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations, *Alternatives to Detention Handbook – Intensive Supervision Appearance Program* (Washington, D.C.: August 16, 2017).

<sup>39</sup>Department of Homeland Security, U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations, *Alternatives to Detention (ATD) Program's SmartLINK Deployment* (March 22, 2018). On April 5, 2021, ERO management distributed a subsequent policy memo—*Use of Technology for New ATD Enrollments*—that directed ERO field officials to consider placing new ATD participants first on the smartphone application instead of other technologies like GPS. According to ATD headquarters officials, while the guidance prioritizes use of the smartphone application for newly enrolled participants, it does not prohibit the use of GPS. These officials explained that since it is faster to place a participant on GPS than the smartphone application, officers may be more likely to assign GPS monitoring to a participant if they are under a time constraint.

Handbook and policy memos are posted on an intranet page where they are accessible to ERO field officials. Table 3 provides examples of policies and procedures included in the ATD Handbook related to program enrollment, supervision, and unenrollment.

**Table 3: Examples of Policies and Procedures Included in the Alternatives to Detention (ATD) Handbook**

Subject	Policy or procedure
Participant enrollment	Individuals must meet three qualifications to be enrolled in ATD. Specifically, they must 1) be over the age of 18, 2) be in removal proceedings, and 3) have a significant likelihood of removability in the foreseeable future. <sup>a</sup> Each Enforcement and Removal Operations (ERO) field office should strive to maintain consistency with initial enrollments into the ATD program.
Supervision levels	ERO field officials should use Multi-Aspect Removal Verification Initiative (MARVIN) guidance to determine the most suitable supervision level for ATD participants. MARVIN guidance instructs officials to place new participants on a high level of supervision when they enter the program, as appropriate based on the participant's circumstance. Officials should regularly review participant compliance with program requirements. If a participant demonstrates compliance, such as attending their assigned office visits and maintaining their GPS bracelets as required, ERO field officials should "de-escalate" them to a lower level of supervision, such as smartphone application monitoring and a lower frequency of home and office visits. Officials should later "escalate" a participant's supervision level if the participant receives an order of removal, as appropriate based on the participant's circumstance. ERO field officials should also escalate a participant's level of monitoring at any point if the participant demonstrates noncompliance with program requirements.
Unenrollment	ERO field officials are to make unenrollment decisions at their discretion by reviewing a participant's case. Once an official decides to unenroll a participant, they should review and update ATD-related databases and complete a Notice to Terminate ATD Participation form.

Source: GAO analysis of U.S. Immigration and Customs Enforcement documentation. | GAO-22-104529

<sup>a</sup>To be removed from the U.S., a foreign national must have travel documents from their country of origin. Some countries are less likely to issue this documentation than other countries. According to an ATD policy memo, ERO field officials should not enroll individuals from such countries into the ATD program.

ERO field officials we interviewed from ATD sites across seven field offices described taking steps that aligned with ATD policies and procedures when implementing the program. ERO field officials at all seven field offices said that they followed enrollment eligibility parameters that aligned with those in the ATD Handbook when making enrollment decisions. For example, officials from two field offices stated that they automatically enroll a participant who meets the enrollment criteria described in table 3.

In addition, ERO field officials at all field offices we spoke with described making supervision decisions that included aspects of supervision level guidance, called Multi-Aspect Removal Verification Initiative (MARVIN), as described in table 3. For example, ERO officials from one field office stated that if a participant shows compliance with program requirements,

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the officials de-escalate their level of supervision to less frequent office and home visits and assign them a form of electronic monitoring other than GPS, which is the most intensive. The officials noted that they frequently make changes to supervision based on information about the participant's compliance with program requirements. The ATD monitoring officer from another field office explained that when considering which supervision level to place a participant, ERO field officials may review information such as the participant's criminal history or background, as required by the ATD Handbook. In addition, ERO field officials will generally increase supervision if a participant receives a final order of removal. With respect to unenrollment, contractor officials we spoke with in all seven field offices stated that ERO field officials determine when to unenroll participants and coordinate with contractor officials, as required by the ATD Handbook.

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### ICE Does Not Ensure ATD Supervision Reviews Are Conducted According to Policy

ATD policy directs ERO field officials to regularly review and update the level of supervision assigned to ATD participants, but ICE does not ensure field officials are conducting supervision reviews according to policy. Specifically, since at least 2008, ICE has had a policy or guidance requiring ERO field officials to routinely review the supervision levels assigned to participants to help ensure the most appropriate levels of case management and monitoring technology are used to improve participants' compliance with program requirements.<sup>40</sup> These reviews are intended to help determine whether participants should be moved to a different level of supervision, such as moving participants from GPS monitoring (the most costly and intensive monitoring technology) to a less costly and intensive technology, such as smartphone application monitoring or telephonic reporting.

In 2011, ICE distributed guidance to ERO field offices in which it recommended practices, which have since evolved into MARVIN guidance, to better ensure cost-effective implementation of the program. This guidance recommended that ERO field officials reserve more intense and costly supervision options for newly-enrolled participants who did not have an order of removal or an immediate court date and participants who had already received a final order of removal. In the 2011 guidance, ICE recommended that ERO field officials review ATD cases at least every 90 days to assess whether participants had demonstrated

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<sup>40</sup>Department of Homeland Security, U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations, *ATD Case Management Policy* (Dec. 17, 2008).

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compliance with the conditions of their release, and if so, de-escalate them to lower levels of supervision.<sup>41</sup>

In our November 2014 report on the ATD program, we identified issues with ICE's ability to determine the extent to which ERO field offices were consistently implementing the 2011 guidance.<sup>42</sup> Specifically, we found differences in how the guidance was being implemented across ERO field offices, and ICE headquarters officials told us that because of limitations in how they collected and maintained program data, they did not know the extent to which ERO field officials had consistently implemented this guidance. We recommended that ICE analyze supervision data, once collected, to monitor implementation of the 2011 guidance.

In response to our recommendation, ICE reported in February 2015 that the ATD contractor had begun to collect data that would allow it to monitor implementation of the guidance. In October 2016, ICE officials stated that they had generated reports to examine the extent to which field offices were changing ATD participants' supervision levels according to guidance. ICE officials provided an example of their analysis of these data, which examined the average length of time ATD participants were on GPS monitoring prior to ERO de-escalating them to a lower level of supervision.<sup>43</sup>

However, ICE does not monitor the completion of supervision reviews every 30 days, as called for in more recent guidance. Our interviews with ERO field officials and analysis of ATD program data suggest that these reviews may not be occurring consistent with that guidance. The 2017 ATD Handbook and an ATD policy memo from March 2021 direct field officials to conduct supervision reviews beginning at enrollment and every 30 days thereafter.<sup>44</sup> ERO field officials we spoke with in four field offices, as well as four ATD monitoring officers, stated that ERO field officials

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<sup>41</sup>The 2011 guidance initially recommended that ICE officials review ATD cases every 180 days. However, after reviewing data on when foreign nationals are most likely to abscond, officials stated that the guidance was changed to at least every 90 days.

<sup>42</sup>[GAO-15-26](#).

<sup>43</sup>We determined that ICE's actions addressed our recommendation.

<sup>44</sup>Department of Homeland Security, U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations, *Case Management for ATD – ISAP Participants* (March 5, 2021).

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conduct supervision reviews less frequently than every 30 days.<sup>45</sup> Of those, officials from one field office stated that they conduct reviews as infrequently as every 6 months. ERO officials from two field offices said they conduct supervision reviews every 30 days as required.

Moreover, while ICE does not maintain data on whether supervision reviews are completed, the data the ATD program contractor began maintaining on changes in supervision levels in response to our recommendation could indicate officers do not consistently perform supervision reviews every 30 days as required. In particular, while an ERO field official could conduct a supervision review and decide not to change a participant's level of technology monitoring, the guidance states that officials should conduct supervision reviews every 30 days and immediately de-escalate participants' supervision levels, if appropriate. Accordingly, periods significantly exceeding 30 days without a technology supervision change recorded in the contractor's data could indicate ERO field officials are not conducting reviews at the frequency the ATD policy directs. Our analysis of ATD contractor data from 2018 through 2020 suggests that almost 89 percent of participants who had a change in their monitoring technology and had not yet received an immigration court decision had their first change over 60 days after being placed on their first technology.<sup>46</sup> About 48 percent of participants had their first change more than 6 months after ERO placed them on their first technology.<sup>47</sup>

Our analysis also showed that the period before a participants' first technology change varied by ERO field office area of responsibility. Participants in the New York field office had the lowest median number of days before their first technology change, at 110 days or almost 4 months. Participants in the Houston field office had the highest median number at 327 days or almost 11 months. Across ERO's field offices' areas of responsibility from 2018 through 2020, a median of 170 days, or

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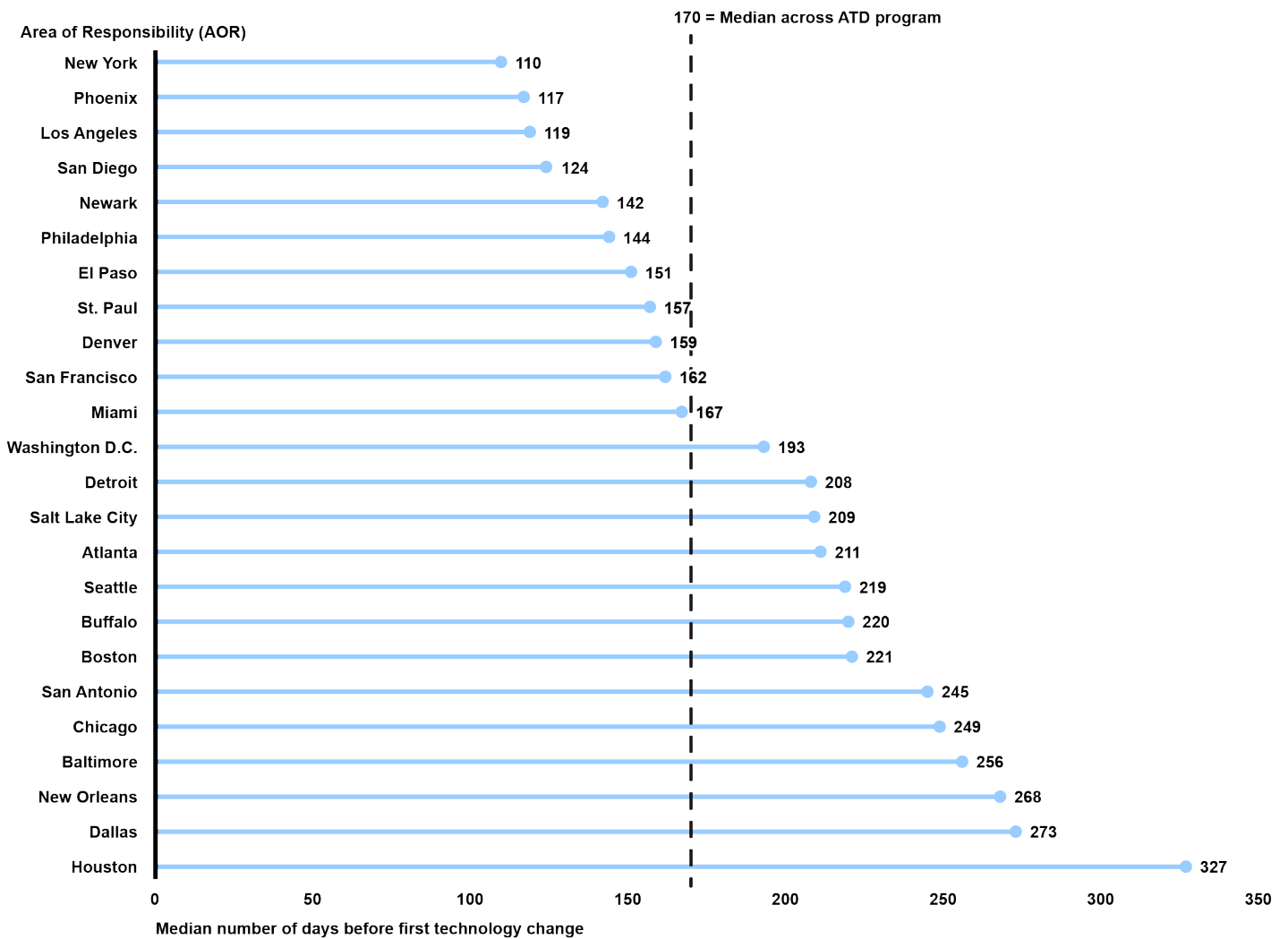
<sup>45</sup>In total, we spoke with ERO field officials and ATD monitoring officers from seven out of 24 field offices operating during the period of our audit work. ERO officials from six field offices and ATD monitoring officers from four field offices commented on the frequency of supervision reviews. Officials from the other ERO field office and ATD monitoring officers from the other three field offices did not comment on the frequency of supervision reviews.

<sup>46</sup>We based our analysis on data for 67,796 participants who had not yet received a court decision because ATD policy requires that ERO field officials conduct supervision case reviews within the first 30 days after enrolling participants and ERO enrolls the majority of ATD participants before receiving a court decision.

<sup>47</sup>Appendix I provides additional information on the amount of time that elapsed before ATD participants received their first technology change from 2018 through 2020.

almost 6 months, passed before ERO field officials changed the monitoring technology for ATD participants who had not yet received an immigration court decision. Figure 10 shows the median number of days before participants received their first technology change for each field office's area of responsibility.

**Figure 10: Median Number of Days Before an Alternatives to Detention (ATD) Participant Received Their First Technology Change by Enforcement and Removal Operations (ERO) Field Office Area of Responsibility, 2018-2020**



Source: GAO analysis of U.S. Immigration and Customs Enforcement contractor data. | GAO-22-104529

Note: This figure includes data for 67,796 participants who had not yet received a court decision because ATD policy requires that ERO field officials conduct supervision case reviews within the first 30 days after enrolling participants and ERO enrolls the majority of ATD participants before receiving

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a court decision. ERO established a 25th field office that became operational in October 2021—after our period of analysis—that is not included in the figure.

ATD headquarters officials stated that they do not monitor whether ERO field officials are conducting supervision reviews consistent with guidance because they do not have a mechanism to routinely verify that officials have conducted those reviews using program data. In this way, ATD headquarters officials may review changes to supervision levels, but not whether ERO conducted all supervision reviews consistent with guidance. ATD headquarters officials told us that they periodically conduct analysis of changes in supervision levels, such as reviewing how long participants are on GPS monitoring in each field office. As a result of one such analysis, ATD headquarters sent the March 2021 memo to ERO field officials reiterating supervision review policies, including that such reviews be conducted every 30 days as well as lists of participants assigned to their office that had been on GPS for longer than 60 days with instructions to review those cases. However, ATD headquarters officials stated that such analysis of changes in supervision levels are not routine, and noted that they do not have the resources to regularly analyze data on changes in ATD participants' supervision levels.

ATD program policy states that regular supervision reviews increase participant compliance and program performance, and that timely de-escalations of participants resulting from supervision reviews contribute to cost-effective program implementation. Furthermore, *Standards for Internal Control in the Federal Government* notes that management should establish and operate activities to monitor the internal control system and evaluate the results, and use quality data to review control activities.<sup>48</sup>

When ICE conducted limited analysis of changes in supervision levels using data it began collecting in response to our 2014 recommendation, the agency identified potential issues with the frequency of supervisory review, asked field offices to review these issues, and reiterated prior guidance intended to help ensure that field offices are managing participants' supervision levels in a cost-effective manner. However, without more regular monitoring of whether supervision reviews are conducted, ATD headquarters cannot ensure that the reviews are implemented according to policy, and by extension, that the reviews are strengthening program performance and participant compliance. Developing a mechanism for ERO field officials to record supervision

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<sup>48</sup>[GAO-14-704G](#).

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reviews would enable ATD headquarters officials to determine whether ERO field officials are conducting supervisions reviews at the appropriate frequency. Additionally, using the information from this mechanism to regularly monitor the completion of reviews according to policy would help ICE to ensure that field officials are allocating limited technology monitoring resources effectively by assigning the most appropriate and cost-effective supervision level to each participant.

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## ICE Does Not Fully Assess ATD Performance or Report Program Data Completely

### ICE Collects and Analyzes Some ATD Program Data

ICE collects a variety of data on the ATD program and its participants, such as whether participants attend their scheduled court hearings; whether participants access social support services, such as referrals to mental health professionals; and reasons why participants are unenrolled from the program, such as for absconding. ATD headquarters officials conduct analyses of some of these data to assess certain aspects of the program, including calculating success and failure rates based on the reasons for which participants are unenrolled, absconsion rates, and court appearance rates.<sup>49</sup>

### Success and Failure Rates

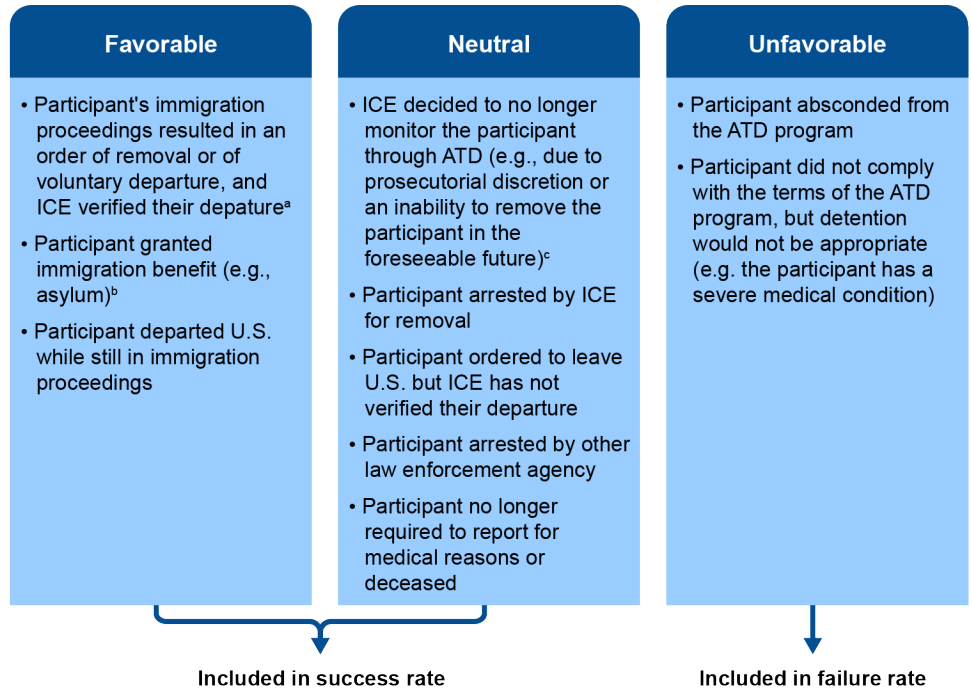
As shown in figure 11, ATD headquarters officials categorize the various reasons participants are unenrolled from the program as favorable, neutral, and unfavorable. For example, ERO unenrolling an ATD participant because they received an immigration benefit (i.e. relief or protection from removal, such as asylum) is considered favorable, no longer being required to report for medical reasons is considered neutral, and absconding while in the program is considered unfavorable.

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<sup>49</sup>ICE uses fiscal year when calculating these statistics, so we use fiscal year in presenting information on them in this section for consistency.



**Figure 11: Reasons for Unenrollment from the Alternatives to Detention Program (ATD), as Categorized by U.S. Immigration and Customs Enforcement's (ICE)**



Source: GAO analysis of ICE documentation. | GAO-22-104529

<sup>a</sup>Voluntary departure refers to an order from an immigration judge that permits a foreign national to leave the country on their own within a designated amount of time, in lieu of formal removal; and failure to comply with such an order carries certain immigration and other legal consequences. Generally, voluntary departure is permitted at the foreign national's own expense. See 8 U.S.C. § 1229c

<sup>b</sup>Immigration benefit refers to a judge granting an individual relief or protection from removal. See 8 U.S.C. § 1229a(c)(4).

<sup>c</sup>Prosecutorial discretion is the long-standing authority of a law enforcement agency to decide how to prioritize the use of its limited resources, including whether, and to what extent, to initiate and pursue enforcement actions in particular cases. In order to be removed from the U.S., a foreign national must have travel documents from their country of origin.

To calculate success rates, ATD headquarters officials add together the number of participants unenrolled for favorable or neutral reasons and divide that by the total number of participants unenrolled over that time period. To calculate failure rates, ATD headquarters officials divide the number of participants unenrolled for unfavorable reasons by the total number of participants unenrolled over that time period. ATD headquarters officials said that they count favorable and neutral reasons as successes because those participants were compliant with the program and did not abscond.

Our analysis of ATD contractor data on unenrollment reasons showed that success rates for fiscal years 2015 through 2020 ranged from 60 to 84 percent and failure rates were from 16 to 40 percent. Neutral reasons for unenrollment predominately drove the success rates. In particular, ERO unenrolled at least two-thirds of participants for neutral reasons from 2015 through 2019, as shown in table 4. In fiscal year 2020, this percentage decreased to just more than half. In each fiscal year from 2015 through 2020, favorable reasons for unenrollment were the smallest share of reasons for which participants were unenrolled.

**Table 4: Percentages of Participant Unenrollment Reasons Categorized by the Alternatives to Detention (ATD) Program as Favorable, Neutral, and Unfavorable, Fiscal Years 2015-2020**

Unenrollment category	Percentage and number in each unenrollment category by fiscal year					
	2015	2016	2017	2018	2019	2020
Favorable	14 (1,745)	10 (2,041)	8 (2,809)	7 (3,345)	4 (3,153)	8 (2,864)
Neutral	70 (8,735)	68 (13,427)	69 (23,750)	68 (32,898)	72 (57,869)	52 (17,610)
Unfavorable	16 (2,002)	22 (4,372)	23 (7,767)	25 (12,286)	24 (19,479)	40 (13,587)

Source: GAO analysis of U.S. Immigration and Customs Enforcement contractor data. | GAO-22-104529

Note: The data for fiscal year 2015 do not include data for October 2014 because the contractor began using the source database on November 1, 2014.

## Absconson Rates

ATD headquarters officials also use the information on reasons for unenrollment to calculate and report absconson rates. ERO considers a participant as having absconded if the individual flees from their current address without any notification or forwarding information and neither the contractor nor ERO can locate the individual. At ATD sites with contractor case specialists, the contractor is to respond to automated alerts that could indicate an individual has absconded, such as a GPS unit not responding, by first trying to make contact with the participant. The contractor officials are then to notify ERO if they cannot find the individual and ERO field officials conduct their own search (at technology-only sites, ERO field officials typically respond to alerts directly). If ERO field officials are unable to locate the participant, they are to refer the case to ERO's Fugitive Operations Program. At this point, ERO unenrolls the participant from the ATD program and records the reason for unenrollment as

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absconding from the program.<sup>50</sup> ATD officials calculate the absconsion rate by dividing the number of participants who were unenrolled from the ATD program for absconding by the total number of participants who were unenrolled for any reason over that time period. We discuss the trends in absconsion rates over time later in this report.

## Court Appearance Rates

ATD headquarters officials also calculate court appearance rates to assess the extent to which participants appear at their scheduled immigration court hearings. While the contractor or ERO officials track all ATD participants' progress through their immigration proceedings, the contractor tracks court appearance information for a subset of ATD participants for whom ERO field officials assign court tracking—approximately 39 percent (125,259) of all participants (320,152) from November 2014 through December 2020.<sup>51</sup> For ATD participants with court tracking, the contractor is to monitor these participants' hearing schedules, inform participants when and where they need to report for their hearings, and record in their database whether participants attended their scheduled hearings. ATD headquarters officials said that the majority of participants at contractor and government sites receive court tracking, and ERO officials at technology-only sites may assign court tracking for the contractor to perform or perform court tracking themselves. ATD headquarters officials also stated that while it is to ERO's benefit to assign court tracking to participants who have not yet received a decision in their immigration proceedings, it is up to ERO officials' discretion whether to assign it for participants.

To calculate the court appearance rate, ATD headquarters officials use contractor data to divide the total number of hearings participants attended by the total number of hearings scheduled for those participants. This rate applies for participants whom ERO assigned court tracking, as neither the contractor nor ERO officials collect court appearance

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<sup>50</sup>Participants who do not report and are out of contact with ICE officials after leaving the ATD program are considered to be fugitives and would not be included in ATD program absconsion statistics.

<sup>51</sup>Court tracking refers to a service in which the contractor tracks ATD participants' court hearing schedule and attendance. The data we obtained from ICE did not permit us to identify to which type of site ERO assigned ATD participants with court tracking. Contractor and ERO officials told us that while staging site participants are technically eligible for court tracking, it is not typically part of the service plan for those participants, as they are meant to be in transit to another location. We included staging site participants in this calculation because it is meant to indicate the approximate percentage of all ATD participants who are included in ATD's calculations of court appearance rates.

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information for other ATD participants. Our analysis of the contractor's court appearance data found that participants who received court tracking by the contractor attended about 99 percent of all scheduled hearings in fiscal years 2015 through 2020.<sup>52</sup>

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### ICE Developed a Performance Goal for ATD, but Does Not Fully Assess Program Performance

In July 2021, ICE developed a performance goal for the ATD program after several years of not using performance goals, but ICE does not assess ATD performance for all core program activities or participant outcomes.<sup>53</sup> In November 2014, we reported that ICE had performance goals for the ATD program, such as achieving a court appearance rate of 94 percent in fiscal year 2011 and increasing the number of participants removed during or immediately following participation in the program by 3 percent each year from 2011 through 2013.<sup>54</sup> We further reported that ICE officials at ATD headquarters discontinued the use of court appearance rates as a performance goal because the court appearance rate consistently surpassed 99 percent and thus did not allow for measuring improvement over time. ATD headquarters officials we spoke with for this review said that they also stopped using removals of participants from the U.S. as a performance goal because there are factors outside the program's control that affect whether a participant is ultimately removed from the U.S., such as delays in obtaining travel

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<sup>52</sup>The data for fiscal year 2015 do not include data for October 2014 because the contractor began using this database on November 1, 2014.

<sup>53</sup>Throughout this report, we use the term performance goal, defined by the *GPRA Modernization Act of 2010*, Pub. L. No. 111-352, 124 Stat. 3866 (2011), which updated the Government Performance and Results Act of 1993 (Pub. L. No. 103-62, 107 Stat. 285), as "a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared, including a goal expressed as a quantitative standard, value, or rate." See 31 U.S.C. §§ 1115, 1120. This is the term that most federal agencies use to assess and report performance. However, DHS uses the term performance measure instead of performance goal to distinguish its performance measures from high level mission goals. For consistency with the term used by the *GPRA Modernization Act of 2010*, we refer to what DHS calls ATD performance measures as performance goals for the purpose of this report. While the *GPRA Modernization Act of 2010*, is applicable to the department or agency level, performance measures and goals are important management tools at all levels of an agency, including the program, project, or activity level. In this report, we define participant "outcome" to mean whether individuals continue to comply with conditions of release, including appearance at immigration court hearings, or the immigration judge's decision or other disposition. This could include whether an individual is removed from the U.S. (if they receive a final order of removal), leaves under an order of voluntary departure, receives a benefit or relief in their immigration court case, becomes a fugitive, or is detained, among other potential outcomes.

<sup>54</sup>[GAO-15-26](#).

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documents from the participant's country of origin.<sup>55</sup> They further stated that they did not use performance goals for the ATD program from fiscal years 2014 through 2021.

In July 2021, ICE management directed ATD headquarters officials to develop a fiscal year 2022 performance goal for the program to serve as a DHS management measure. DHS will publicly report on this performance goal, according to DHS officials.<sup>56</sup> Specifically, ATD headquarters officials developed a performance goal for the percentage of ATD participants who demonstrate compliance with program requirements, with a target level of performance of 85 percent in fiscal year 2022.

However, this performance goal does not cover all ATD program activities. For example, a substantial part of the ATD program contract consists of case management activities, such as conducting home and office visits and determining participants' needs for support services, which the contractor is to provide at all contractor and government sites. ATD collects information on case management activities in its database, such as how many ATD participants receive referrals to outside support services or receive legal orientation presentations. But, it does not use the information to assess the performance of those activities.

Moreover, ATD's new performance goal does not cover relevant outcomes for many participants with respect to whether they continue to comply with release conditions after ERO unenrolls them from the program. As discussed previously, most (78 percent) participants between November 2014 and December 2020 were unenrolled in the pre-decision legal stage and about half (51 percent) of participants were unenrolled from the program and placed on other conditions of release outside of ATD. However, ATD headquarters officials told us they generally do not track outcomes for these individuals after they are no

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<sup>55</sup>According to ICE officials, the last year ICE had a performance goal for court appearance rates was fiscal year 2011 and the last year it had a performance goal for removal rates was fiscal year 2013.

<sup>56</sup>According to DHS officials, DHS management measures are output-oriented measures tied to programs' day-to-day operations. DHS publishes management measures in congressional budget justifications and on [performance.gov](https://www.performance.gov).

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longer monitored as part of the ATD program.<sup>57</sup> Rather, ATD headquarters officials count participants unenrolled from the program and placed on other conditions of release as successes when calculating the success rate for the program.

ICE collects data that could be used to determine ATD participants' outcomes, such as if they became fugitives or otherwise stopped complying with release conditions, but ATD headquarters officials said that they do not generally use these data. Such information could be used to help ICE understand, for example, the extent to which individuals enrolled in ATD complied with release conditions after they were unenrolled, and whether it was the appropriate decision or time for ERO officials to unenroll them from the program. For instance, if such information showed that a certain proportion or number of individuals became fugitives shortly after being unenrolled from the ATD program, ICE could use that information to reassess its overall guidance for determining how and when to consider unenrolling individuals from the program.

ATD headquarters officials said that while, broadly speaking, they see value in having performance goals and they have developed a new goal for fiscal year 2022, the goals of the program and immigration priorities shift over time, particularly between administrations, making it difficult to establish stable performance goals. However, we have previously reported on the importance of performance goals and measures that allow agencies to measure progress over time.<sup>58</sup> Further, agencies can develop goals and measures so that the results demonstrate the value of the program, withstanding external factors, such as a changing political environment.

In addition, ATD headquarters officials stated that they do not have the capacity to keep data on ATD participants' cases up to date in ICE's database, and that tracking participants' outcomes after they leave the

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<sup>57</sup>ATD headquarters officials include individuals who were removed within the same fiscal year of being unenrolled from ATD in calculating the number of ATD participants who were removed from the U.S. However, they do not track any other outcomes after individuals leave the ATD program, such as whether they adhered to the conditions of their release, or track those who were removed more than a year after being in the ATD program.

<sup>58</sup>For example, see GAO, *Drug Control: Certain DOD and DHS Joint Task Forces Should Enhance Their Performance Measures to Better Assess Counterdrug Activities*, [GAO-19-441](#) (Washington, D.C.: July 9, 2019).

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program is outside the scope of the ATD program. We recognize that analyzing information on participants' outcomes after ERO unenrolls them from the ATD program has resource implications, particularly for the ATD headquarters office. However, other ICE offices collect data that include outcomes for a wider population of participants than ATD headquarters officials currently track, which ATD officials could use. For example, ICE has a database of all foreign nationals it monitors that contains information about individuals who were removed from the U.S., departed the country voluntarily, or who became fugitives, among other variables. Taking account of participants' outcomes after ERO unenrolls them could provide greater insights into the contributions of the ATD program to ICE's efforts to ensure that individuals who are not detained while in immigration proceedings comply with their release conditions, depart, or are removed from the country, if so ordered by an immigration judge.

The *GPRA Modernization Act of 2010* includes various requirements related to measuring federal government performance, such as the establishment of (1) performance goals with target levels of performance expressed in an objective, quantifiable, and measurable form (unless authorized to be in an alternative form) to provide a basis for comparing actual program results to such performance goals; and (2) a balanced set of performance indicators.<sup>59</sup> While these requirements apply to the agency-wide level (e.g. DHS), we have previously reported that they can serve as leading practices at lower organizational levels, including component agencies (e.g. ICE) and individual programs (e.g. ATD).<sup>60</sup> Furthermore, our prior work has found that effective performance goals should be measurable, objective, and reliable and clearly communicate

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<sup>59</sup>31 U.S.C. § 1115.

<sup>60</sup>For example: GAO, *Coast Guard: Actions Needed to Enhance Performance Information Transparency and Monitoring*, [GAO-18-13](#) (Washington, D.C.: Oct. 27, 2017); *Motor Carriers: Better Information Needed to Assess Effectiveness and Efficiency of Safety Interventions*, [GAO-17-49](#) (Washington, D.C.: Oct. 27, 2016); and *Environmental Justice: EPA Needs to Take Additional Actions to Help Ensure Effective Implementation*, [GAO-12-77](#) (Washington, D.C.: Oct. 6, 2011).

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performance targets and that performance goals and measures should cover core program activities and priorities.<sup>61</sup>

Establishing performance goals with measurable targets that cover core program activities and participant compliance and outcomes would position ICE to assess the extent to which the program is achieving intended results and identify the need for improvements. Additionally, establishing such goals would help ensure that officials implementing the ATD program have a shared understanding of the priorities of the program. Further, by covering core program activities in these performance goals, such as case management activities, and taking into account the final outcomes of ATD participants after ERO unenrolls them and places them on other conditions of release, ICE would have a more complete picture of the performance of the program, such as insights to help evaluate, on a programwide basis, decisions and timing for unenrolling individuals from the program.

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## ICE Has Not Completely or Consistently Presented Absconson Information in External Reporting

ICE has not reported ATD absconson information completely or consistently explained its methodology for calculating the absconson rates it externally reports—such as to Congress or the public. Regarding the completeness of absconson information, ICE has not presented data that compares the number of ATD absconders to the total population of active program participants. Rather, ICE has presented absconson information as a rate, as described above, calculated by dividing the number of ATD participants unenrolled from the program for absconding by the total number of those unenrolled for any reason over that time period. Using this methodology, in its fiscal year 2022 Congressional

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<sup>61</sup>Our relevant prior reports include: *Native American Youth: Agencies Incorporated Almost All Leading Practices When Assessing Grant Programs That Could Prevent or Address Delinquency*, [GAO-20-600](#) (Washington, D.C.: Aug. 6, 2020); *Critical Infrastructure Protection: Actions Needed to Address Significant Weaknesses in TSA's Pipeline Security Program Management*, [GAO-19-48](#) (Washington, D.C.: Dec. 18, 2018); *Federal Prison System: Justice Could Better Measure Progress Addressing Incarceration Challenges*, [GAO-15-454](#) (Washington, D.C.: July 19, 2015); *Managing for Results: Agencies' Trends in the Use of Performance Information to Make Decisions*, [GAO-14-747](#) (Washington, D.C.: Sept. 26, 2014); *Defense Health Care Reform: Additional Implementation Details Would Increase Transparency of DOD's Plans and Enhance Accountability*, [GAO-14-49](#) (Washington, D.C.: Nov. 6, 2013); *Information Sharing: DHS Could Better Define How It Plans to Meet Its State and Local Mission and Improve Accountability*, [GAO-11-223](#) (Washington, D.C.: Dec. 16, 2010); *Tax Administration: IRS Needs to Further Refine Its Tax Filing Season Performance Measures*, [GAO-03-143](#) (Washington, D.C.: Nov. 22, 2002); *Agency Performance Plans: Examples of Practices That Can Improve Usefulness to Decisionmakers*, [GAO/GGD/AIMD-99-69](#) (Washington, D.C.: Feb. 26, 1999); and *The Results Act: An Evaluator's Guide to Assessing Agency Annual Performance Plans*, [GAO/GGD-10.1.20](#) (Washington, D.C.: April 1, 1998).



Budget Justification, ICE reported that the absconsion rate for the ATD program was 33 percent in fiscal year 2020.<sup>62</sup> In contrast, calculating the percentage of ATD participants who absconded out of the total number of participants active in the program during that time period yields a lower absconsion rate of nine percent.<sup>63</sup> Figure 12 shows ICE’s methodology compared to a methodology that includes both unenrolled and active ATD participants.

**Figure 12: Comparison of Methodologies for Calculating Absconsion Rates of Participants in the Alternatives to Detention (ATD) Program**

U.S. Immigration and Customs Enforcement methodology:

Alternate methodology using total population of participants:

$\left( \frac{\text{Number unenrolled for absconding}}{\text{Total number unenrolled}} \right) \times 100 = \%$	$\left( \frac{\text{Number unenrolled for absconding}}{\text{Total number of participants (active and unenrolled)}} \right) \times 100 = \%$
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Source: U.S. Immigration and Customs Enforcement (ICE) documentation. | GAO-22-104529

When we compared the absconsion rates ICE calculated for fiscal years 2015 through 2020, as shown in table 5, with an absconsion rate that accounts for both active and unenrolled participants, we found that the absconsion rate using the latter methodology was substantially lower. In particular, the rate based on the total population of active participants was less than half of the rate using ICE’s methodology each year, and as low as a quarter of the rate using ICE’s methodology.

**Table 5: Alternatives to Detention (ATD) Program Absconsion Rates Reported by U.S. Immigration and Customs Enforcement (ICE) Compared to Rates Using Total ATD Population, Fiscal Years 2015-2020**

Absconsion rate methodology	Absconsion rate (percentage) by fiscal year					
	2015	2016	2017	2018	2019	2020
ICE methodology using unenrolled participants	12	20	20	23	23	33
Alternate methodology using total population (active and unenrolled participants)	4	5	7	8	10	9

Source: ICE documentation and GAO analysis of ICE contractor data | GAO-22-104529

<sup>62</sup>Department of Homeland Security. *U.S. Immigration and Customs Enforcement Budget Overview: Fiscal Year 2022 Congressional Justification* (Washington D.C., 2021).

<sup>63</sup>Appendix I presents additional data on absconsion rates by ERO field office area of responsibility.

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Note: The data for fiscal year 2015 do not include data for October 2014 because the contractor began using the source database on November 1, 2014.

ICE's presentation of absconsion information in its external reporting on the ATD program differs from how it reports similar data for other programs. For example, ERO reports the number of fugitives by presenting the number of fugitives and the total number of non-detained foreign nationals that ICE monitors, instead of presenting a rate.

Additionally, regarding consistency, ICE has reported ATD absconsion rates externally in both its *Fiscal Year 2020 Enforcement and Removal Operations Report* and recent congressional budget justifications.<sup>64</sup> While the fiscal year 2020 ERO report includes a footnote explaining the methodology ICE used to calculate the absconsion rate, ICE's congressional budget justifications do not. Without ICE explaining how it calculates the absconsion rates, readers may interpret them—like information ICE reports for other programs—to be based on the total number of ATD participants active during the time period and not just those who were unenrolled from the program.

ATD headquarters officials said that while they have been asked in the past to calculate absconsion rates using the total number of participants, they generally chose not to because the outcomes of active participants are unknown. However, how ICE calculates absconsion rates is unlike how DHS reports rates for other programs, and differs from how the agency calculates ATD program success rates. For example, ICE counts participants with unknown final outcomes as successes when calculating success rates because it includes participants unenrolled and placed on other conditions of release as successes. Additionally, ICE could report absconsion information using both methods—only considering those unenrolled and then including active participants. ATD headquarters officials also told us that it is up to ICE—and not the ATD program—to decide which calculations are included in external documents such as congressional budget justifications.

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<sup>64</sup>U.S. Immigration and Customs Enforcement, *Fiscal Year 2020 Enforcement and Removal Operations Report* (Washington, D.C. n.d.); Department of Homeland Security. *U.S. Immigration and Customs Enforcement Budget Overview: Fiscal Year 2022 Congressional Justification* (Washington D.C., 2021); Department of Homeland Security. *U.S. Immigration and Customs Enforcement Budget Overview: Fiscal Year 2021 Congressional Justification* (Washington D.C., 2020); and Department of Homeland Security. *U.S. Immigration and Customs Enforcement Budget Overview: Fiscal Year 2020 Congressional Justification* (Washington D.C., 2019).

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DHS's instruction accompanying its information quality directive states that objectivity is part of the standard for information quality, and defines objectivity as including whether reported information is reported in an "accurate, clear, complete, and unbiased manner." This also includes whether the information is presented with proper context.<sup>65</sup> In addition, Office of Management and Budget guidance states that the credible use of evidence in decision making requires an understanding of what conclusions can and cannot be drawn from the information presented.<sup>66</sup> By including absconsion information relative to the total population of both active and unenrolled participants and consistently explaining the methodology for how it calculates ATD absconsion rates it externally reports, ICE could present a more complete picture of the program's performance related to absconsions and help ensure policymakers have the context needed to appropriately use the information to inform policy and budgetary decisions.

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### ICE Does Not Fully Ensure the ATD Contractor Meets Standards or Addresses Audit Findings

ICE does not fully ensure the ATD program contractor that provides case management and electronic monitoring services for participants at 242 sites across the country meets standards or addresses the results of audit findings.<sup>67</sup> Although ATD headquarters and field offices conduct some audit-focused activities, ICE does not fully assess the contractor against the standards for performance established in the contract. Further, ICE does not follow-up or document whether the contractor takes actions to resolve issues it identifies through audits of ATD case files. Additionally, ICE included a new provision for the contractor to provide legal orientation presentations in the most recent ATD contract, but ICE does not have reasonable assurance that the contractor is meeting this requirement.

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### ICE Conducts Some Contract Oversight Activities

ATD headquarters and ERO field officials conduct some activities to oversee the ATD program contractor. These activities focus on case file and billing statement audits. Within ATD headquarters, the Contracting Officer's Representative (COR), Alternate COR, and one staff person,

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<sup>65</sup>Department of Homeland Security. *DHS Directive: Information Quality Implementation*. Instruction number 139-02-001 (Washington D.C.; Nov. 27, 2019).

<sup>66</sup>Office of Management and Budget. *Circular No. A-11: Preparation, Submission, and Execution of the Budget*. (Washington D.C.; 2016).

<sup>67</sup>This figure represents the number of ATD sites active as of the end of fiscal year 2021.

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lead efforts to oversee the ATD program contractor.<sup>68</sup> The COR is responsible for overseeing the contractor's daily activities and performance, and for ensuring the contractor complies with the terms of the contract. In particular, the contract specifies 17 performance standards the contractor is to meet, and defines the acceptable levels of performance for each standard—called the acceptable quality level.<sup>69</sup> For each standard, the contract also lists one or more methods ICE is to use to ensure the contractor's performance meets the acceptable quality level, the frequency with which ICE will monitor the contractor's performance relative to the acceptable quality level, or both. As an example, one performance standard is for the contractor to conduct at least 99 percent of home visits to ATD participants' residences as assigned by ERO field officials. To conduct home visits, a contractor case specialist is to travel to the participants' residences and scan their ID cards to verify they are home, document information about any other individuals residing at the residence, and look for possible signs of absconding, among other tasks.

The contract specifies that ICE will review records within the contractor's database and conduct site visits to contractor locations to assess its performance against some standards. According to the contract, performance that does not meet the acceptable quality level—such as conducting fewer than 99 percent of required home visits—is either “deficient,” meaning the contractor needs improvement, or “at-risk,” meaning the contractor is failing to meet the majority of the performance standard's attributes.<sup>70</sup> Table 6 shows examples of the standards and the acceptable quality levels the contractor is to achieve.

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<sup>68</sup>For the purposes of this report, we refer to these individuals collectively as quality assurance officials.

<sup>69</sup>The ATD contract that began on August 1, 2020 specifies performance standards for 18 tasks the contractor is to perform. However, the contract lists one task requiring the contractor to develop and implement a mobile case management system (database) twice, so there are 17 unique contractor tasks for which the contract establishes a performance standard. An April 2021 contract modification removed the requirement one of these 17 standards assesses. Accordingly, the contractor was required to meet 17 standards from August 2020 to April 2021, and has since been required to meet 16 standards.

<sup>70</sup>The contract states ICE may withhold or deduct payment from the contractor for unsatisfactory performance on the required tasks as documented through ICE's monitoring of the contractor's performance.

**Table 6: Examples of Contractor Tasks, Performance Standards, and U.S. Customs and Immigration Enforcement (ICE) Oversight Procedures Specified in the Alternatives to Detention (ATD) Program Contract**

Contractor task	Performance standard	Acceptable quality level (percentage)	Method ICE is to use to ensure acceptable quality level is met
<b>Conduct program enrollments and orientations:</b> The contractor is to enroll and provide a program orientation for participants assigned to home or office visits. Steps include recording demographic information, completing appropriate forms, and providing participants a list of referrals to community providers as necessary.	Conduct program enrollments and orientations in accordance with the contract.	100	Reviewing the contractor's database and performing quality assurance site visits to ATD sites.
<b>Develop individual service plans:</b> The contractor is to develop an individualized service plan for participants assigned to home or office visits. The contractor is also to perform services as assigned by Enforcement and Removal Operations (ERO) officials, such as tracking a participant's court hearing status.	Update individual service plan at a minimum of each month or at each office visit.	100	Reviewing the contractor's database and performing quality assurance site visits to ATD sites.
<b>Conduct residence verification:</b> The contractor is to visit the participant's residence within 48 hours of enrollment to verify the participant lives there and to gather data about the residence that the contractor can corroborate at future home visits.	Conduct residence verifications in accordance with the contract.	99	Reviewing the contractor's database and performing quality assurance site visits to ATD sites.
<b>Conduct home visits:</b> The contractor is to visit the participant's residence as scheduled by an ERO official. Home visits include tasks such as scanning a participant's ID card and documenting any safety concerns.	Conduct home visits in accordance with the contract.	99	Reviewing the contractor's database and performing quality assurance site visits to ATD sites.
<b>Provide translator services:</b> The contractor is to provide professional translators or certified bilingual staff to communicate with program participants who do not speak or comprehend English. The contractor may use commercial telephonic interpretation services for this purpose as approved by the Contracting Officer's Representative.	Provide translator services in accordance with the contract.	95	Ensuring on a monthly basis that the contractor is providing appropriate translator services.

Source: GAO analysis of the ATD program contract. | GAO-22-104529

Quality assurance officials conduct weekly audits of ATD participants' electronic case files by reviewing available information in ICE's and the contractor's databases. These audits are intended to ensure the contractor is providing the level of supervision and services to ATD participants as assigned. According to quality assurance officials, these audits encompass the method of oversight the contract describes as a review of the contractor's database. Specifically, the official with primary responsibility for conducting the audits selects one of ERO's field offices to audit each month and selects 25 to 35 participant case files per week to review. The official checks the contractor's database to make sure that the contractor is performing the services as ERO assigns. For example, if the case file information in ICE's database reflects that a participant should receive GPS monitoring and weekly home visits, the quality

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assurance official will ensure the contractor's database shows that the contractor performed the monitoring and home visits as assigned.

In the field, ATD monitoring officers conduct monthly billing statement audits to ensure the contractor bills the government for the correct services. These officers work with ERO field officials at ATD sites at their respective field offices to determine whether the types and number of services the contractor bills each month match with the services assigned by ERO. For example, ATD monitoring officers compare the number of program participants assigned to GPS monitoring that month at a particular location with the billing invoice to ensure that it matches the number of ATD participants the contractor has billed ICE for GPS monitoring. ATD headquarters officials told us that monitoring officers are expected to conduct billing statement audits for at least 3 percent of the participant case files within their field office's area of responsibility each month. ATD monitoring officers in each of the seven field offices we spoke with stated their field offices met the 3 percent requirement. Officers from three of the field offices said they audited more than the 3 percent requirement. For example, officials in one field office stated they typically audit 10 to 15 percent of the monthly case files.

In addition to billing statement audits, ATD monitoring officers are responsible for informal, day-to-day oversight of the contractor in their respective field office's area of responsibility. Quality assurance officials stated ATD monitoring officers work closely with the contractor to resolve issues in real time, and that if a problem at an ATD site cannot be resolved at the local level, the ERO field officials are to contact the COR for help resolving the issue. For example, the COR told us that the contractor was unable to provide the appropriate GPS ankle bracelets needed at one location, and the ATD monitoring officer contacted the COR, who was able to work with the contractor to get the GPS bracelets delivered.

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### ICE Does Not Fully Assess the Contractor against Standards in the ATD Contract

While ICE conducts some contract oversight activities, ICE does not fully assess the contractor against the standards for performance established in the contract. The ATD contract assigns the COR responsibility for assuring proper oversight of the contract, and directs the COR to use performance data to measure the contractor's performance against each performance standard. Specifically, as described above, the contract prescribes the methods or frequency for evaluating each performance standard to ensure on a recurring basis that the contractor is meeting each standard. The contract requires the COR to document the results of

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these oversight efforts, including any instances of deficient or at-risk performance, and to store the results in a quality assurance file.

Quality assurance officials told us their monthly case file audits, site visits to ERO field offices, and the collection of contractor documentation are meant to serve as the oversight required for each of the performance standards. However, we identified obstacles with how ICE is collecting, recording, and using information from these activities that prevent it from assessing the ATD contractor's performance against the standards as required by the contract. In particular, in conducting these oversight activities, ICE does not record the results in a manner that allows for analysis or collect all information needed to assess each standard.

**Case file audits.** With respect to case file audits, ICE does not collect or record the information needed to assess against standards or analyze results. While the ATD contract identifies case file audits as the method for assessing four of the 17 performance standards, the information ICE collects through the audits is not sufficient to assess whether the contractor is performing at the acceptable quality level.<sup>71</sup> This is because ICE's audit findings do not always identify whether the contractor was responsible for errors identified and therefore whether the errors were reflective of its performance. Furthermore, quality assurance officials do not record the findings in a manner that allows them to aggregate the data across audits for an overall picture of the contractor's performance. As discussed above, the case file audits compare information in ICE's and the contractor's databases to verify that the contractor is performing the services as ERO assigns and identify relevant discrepancies.

In our analysis of all the weekly case file audits the quality assurance officials conducted from February 1, 2021 to June 3, 2021, we found 60 audit findings that highlighted an error or discrepancy between ICE's and the contractor's databases.<sup>72</sup> However, of these 60 findings, 55 did not clearly specify whether the discrepancy reflected an error by the contractor or by ICE. For example, results for one audit we reviewed from February 2021 identified three individuals who ERO had unenrolled from the ATD program in 2011, 2013, and 2014, respectively, but who were

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<sup>71</sup>As described in table 6, the contract requires ICE to use case file audits and site visits to access the contractor's compliance with conducting program enrollments, completing individual service plans, and conducting home visits and residence verifications.

<sup>72</sup>The 16 weekly case file audits that quality assurance officials conducted during this time frame included a review of 496 participant files.

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listed in a database as active ATD participants. However, the audit documentation did not specify whether the participants were mistakenly active in the government database or the contractor's database—in which case the contractor could have been billing the government for monitoring ATD participants who were no longer participating in the program.<sup>73</sup> Such information would be necessary for ICE to assess, for example, whether the contractor met the performance standard requiring it to update a participant's individual service plan at each office visit.

Another audit from May 2021 identified two instances where the Case Identification Number did not match between ICE's and the contractor's databases, but the audit report did not specify which database had the correct information.<sup>74</sup> Quality assurance officials who conducted the audits told us they could not tell the nature or extent of the findings from the audit results they recorded. These officials stated that additional steps may be needed to determine which database contained the error, such as discussing the issue with the pertinent ERO field office, and they consider such steps too labor intensive given their workload. We recognize that definitively determining the source of errors identified through audits may require additional steps. However, if case file audit findings do not identify how or in which database the errors occurred, the information does not enable ICE to determine whether the contractor met the contract requirements for the four performance standards against which the audits are to assess.

In addition, the officials conducting the case file audits told us that they do not record their audit findings in a standardized manner. They do not record results using, for example, a drop-down menu to select specific types of findings or using pre-set language to describe different types of findings. Rather, they record findings on individual forms created for that week's audit and are not able to compile them across time or field offices in an automated manner. For example, if an audit finds the contractor missed conducting a site visit, officials conducting the case file audits do not compile that finding with the same findings from other audits. Thus,

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<sup>73</sup>Contractor officials told us that, upon discovery of a mistake or billing discrepancy, the contractor credits the amount the government was charged, regardless of the source of the discrepancy.

<sup>74</sup>The extent to which ICE and the contractor take corrective actions to address audit findings is discussed below.



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ICE cannot readily identify how often the contractor missed making the required site visits.

Without ensuring the results of its oversight activities are recorded in a manner that allows for analysis of performance against the contract standards, ICE cannot meaningfully use the results to determine whether the contractor is meeting those standards. Such efforts include identifying in ICE's audit documentation when findings reflect an issue with the contractor's performance or an error by ICE, as well as recording the findings using standardized formats that are conducive to analyzing the data across all audits and comparing the results to the acceptable quality level in the contract.

**Site visits.** Although the contract requires ICE to use site visits to oversee five of the 17 performance standards, ICE stopped conducting site visits in 2018.<sup>75</sup> Quality assurance officials stated that prior to 2018, the group conducted monthly visits to ATD sites to assess contractor performance, and as part of these visits, collected information related to some of the performance standards. For example, quality assurance officials would determine whether the contractor was employing enough staff at an ATD site to maintain the required ratio of case specialists to ATD participants.<sup>76</sup> These officials also told us that the COVID-19 pandemic prevented them from conducting site visits to ATD locations as part of their contract oversight efforts. While we recognize that the COVID-19 pandemic presents challenges to conducting in-person site visits, quality assurance officials stated they stopped conducting site visits in 2018—before the pandemic—due to resource constraints.

Near the end of our review, ATD headquarters officials told us that they plan to reinstate site visits and had developed a tentative list of seven locations. This is a positive step that could allow ICE to collect information related to some of the performance standards. However, these initial plans did not include time frames, identify the specific types of information ICE intends to collect through the site visits, or how ICE will utilize the information to assess the contractor's performance against standards.

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<sup>75</sup>The contract requires ICE to use site visits to assess the contractor's compliance with the same four tasks for which it is to use case file audits. Additionally, ICE is to use site visits to ensure the contractor is creating and maintaining case records.

<sup>76</sup>The contract previously required the contractor to adhere to a staffing ratio of one case specialist for every 125 ATD participants, but a contract modification in April 2021 removed this requirement.

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**Contractor documentation.** ATD quality assurance officials stated that documentation they collect from the contractor provides information related to some performance standards. However, they could not explain or provide examples or documentation showing that they collect the specific information needed to assess against standards or that they use the information for that purpose. For example, as described in table 6, one performance standard requires ICE to ensure on a monthly basis that the contractor provides professional translators or certified bilingual staff to communicate with program participants who do not speak English for at least 95 percent of applicable cases. When asked, ATD headquarters officials provided some information on bilingual staff and translation services available to ATD participants, but could not provide documentation to support that the contractor has met the standard. For example, ATD headquarters officials said that 96 percent of staff who interact directly with ATD participants are bilingual. However, officials did not provide supporting documentation and could not demonstrate that they collect information needed to assess whether these language skills align with ATD participants' translation needs in 95 percent of cases or that they use information they collect for that purpose.

ATD headquarters officials stated that it would be beneficial for ICE to enhance its oversight efforts over the ATD contract, but that resource constraints presented challenges. These officials also stated that they rely largely on informal daily interactions to oversee the ATD contract. The ATD contract requires ICE to assess the contractor's performance against the acceptable quality level for each standard. Additionally, according to ICE contract oversight guidance for CORs, the plan for assessing contractor performance and the level of oversight the approach includes should be commensurate with the dollar amount, risk, and complexity of the contract requirements.<sup>77</sup> The ATD contract has a value of \$2.2 billion and entails the contractor providing services at over 240 ATD sites.<sup>78</sup> Ensuring that it collects the information needed to assess the contractor against all performance standards and recording the results in a manner that allows for analysis would position ICE to assess the contractor's performance as prescribed by the contract. Further, using this information to assess whether the contractor is meeting the acceptable quality levels

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<sup>77</sup>In addition, the COR should use this oversight to determine if the contractor has met the terms and conditions of the contract. See U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations, *Contracting Officer's Representative Supplement*, Version 1.0 (October 2015).

<sup>78</sup>This figure represents the number of ATD sites active as of the end of fiscal year 2021.

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for all performance standards and documenting the results would help ICE ensure that the contractor is achieving outcomes as identified in the contract and hold the contractor accountable for providing services as paid for by the government.

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### ICE Does Not Ensure that Case File Audit Findings Are Addressed

ICE quality assurance officials stated that they work closely with the ATD contractor to identify and resolve issues that come up over the course of delivering services to ATD participants, but ICE does not follow up or document whether the contractor takes actions to resolve case file audit findings. For example, quality assurance officials do not take steps to verify that the contractor correctly records whether the case specialist missed conducting a home visit or that the contractor removes ATD participants ERO previously directed the contractor to unenroll from its active records. Leaving an unenrolled participant active in the database could result in ICE paying the contractor to monitor individuals the agency intended to unenroll from ATD.

ICE officials stated they notify the contractor Program Director by email about any findings from their case file audits. Quality assurance officials said that they generally trust the contractor to make the necessary corrections after bringing an audit finding to their attention. According to contractor officials, the Program Director and the contractor's relevant Regional Manager review and share the audit findings among each other internally so that corrective action can be taken to address the audit finding. If the contractor disagrees with the finding or believes ICE may need additional information about the finding, the Program Director responds to the email to relay the contractor's perspective. However, quality assurance officials stated that there is no documentation of the contractor's actions to address audit findings—such as marking on the audit form that the finding was resolved.

These officials noted that an ATD monitoring officer may review the actions taken by the contractor to address case file audit findings if the actions relate to cases selected as a part of the monthly audits of randomly selected billing statements. However, ATD monitoring officers are required to select and review billing statements for 3 percent of participants each month so findings from an ATD headquarters case file audit may not be included in the sample of billing statements reviewed in the field. In the absence of follow-up on deficiencies identified in audit findings, ICE cannot be sure that the contractor has resolved the findings and is not, for example, charging the government to monitor ATD participants who are no longer in the program.

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*Standards for Internal Control in the Federal Government* states that management should evaluate issues and determine the appropriate corrective actions to remediate internal control deficiencies—such as audit findings—on a timely basis.<sup>79</sup> Management should then complete and document corrective actions to remediate these deficiencies in a timely manner. Taking steps to ensure the contractor addresses case file audit findings and documenting their resolution would help provide ICE with reasonable assurance that the contractor is correcting identified issues and providing appropriate supervision of and services to ATD participants.

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### ICE Does Not Have Reasonable Assurance That the ATD Contractor Provides Legal Orientation Presentations

As part of the most recent ATD contract, ICE added a new requirement that the contractor provide certain participants with the opportunity to attend a legal orientation presentation, but ICE does not have reasonable assurance that the contractor is meeting this requirement. The contractor coordinated with a private attorney to begin offering a legal orientation presentation called “Know Your Rights” to ATD participants in June 2018. Contractor officials stated that their leadership was aware that presentations about the immigration proceedings process were provided to some individuals in immigration detention facilities, and suggested to ICE that similar information could be beneficial for ATD participants. For example, these officials told us that the presentations, which cover topics such as the immigration court hearing process and what may happen if a participant does not appear in court, can help participants understand the importance of complying with program requirements, including attending court hearings. Further, having someone unaffiliated with ICE—such as a private attorney—explain the immigration court proceedings process can be helpful to participants, according to contractor officials. Subsequently, the Conference Report accompanying the Consolidated Appropriations Act, 2019 directed that ICE ensure that access to “Know Your Rights” presentations is available at the point of enrollment for all ATD programming.<sup>80</sup>

In the most recent ATD contract that went into effect on August 1, 2020, ICE began requiring that the contractor provide all participants enrolled at contractor sites with access to the legal orientation presentation.

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<sup>79</sup>[GAO-14-704G](#).

<sup>80</sup>See 2019 Conference Report, H.R. Rep. No. 116-9, at 484 (Feb. 13, 2019) accompanying Pub. L. No. 116-6, 133 Stat. 13. The 2021 and 2022 Explanatory Statements both direct ICE to continue to brief the Committees on ATD contracts involving the “Know Your Rights” program for new participants. 166 Cong. Rec. H8311, H8472 (daily ed. Dec. 21, 2020); 168 Cong. Rec. H1709, H2402 (daily ed. Mar. 9, 2022).

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Specifically, the contract requires the contractor, upon enrolling a new participant at the site, schedule a presentation for the participant, which a private attorney is to deliver. According to ATD headquarters officials, ICE did not change many requirements under the new ATD contract, but decided to require provision of the presentation because they determined it would be meaningful to provide this orientation across ATD locations to ensure that participants had more information about the immigration process at minimal cost to the government.

According to contractor officials, ATD sites did not generally offer the presentation to participants during the initial months of the new contract, as required, because the COVID-19 pandemic halted in-person presentations and it took months for the contractor to offer the presentation virtually. These officials stated that in February 2021, the contractor began offering the presentation more widely by making a recording of the presentation available to participants. The contractor also began showing the recorded presentation on televisions in contractor site offices for participants to watch while waiting for appointments and offering some presentations with a live instructor using online platforms, according to contractor officials.<sup>81</sup> In February 2022, contractor officials told us that they had recently sent a link to the recorded presentation to all active ATD participants with a valid email address at contractor and government sites. In addition, contractor officials told us they began sending a link to the recorded presentation to all newly-enrolled participants at contractor and government sites who provided an email address to the contractor on a weekly basis.

While contractor officials described taking these steps to offer virtual legal orientation presentations to ATD participants, ICE does not have reasonable assurance that the contractor is providing them as required by the contract because ICE does not monitor the contractor's provision of them. Additionally, although the contractor began sending the link by email to enrollees at contractor and government sites, contractor officials said that they anticipate returning to offering in-person presentations as an option in the future. Furthermore, our interviews and data analysis suggest that the contractor may continue to face challenges providing

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<sup>81</sup>Contractor officials explained that, unlike with the recorded presentation, participants can ask the attorney instructor questions during virtual presentations with a live instructor. These officials said that the contractor generally offers the presentations with a live instructor to participants who have questions after watching the recorded version or who speak a language for which the contractor does not have a recorded presentation.

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access to the presentations as required by the contract. Specifically, ICE officials noted that some ATD participants do not have the requisite technology or technology literacy to participate in virtual presentations.

Additionally, while the contractor does not collect data on whether or how it provides participants with access to presentations, it does maintain data on whether an ATD participant attended or viewed a presentation.<sup>82</sup> ICE officials said that they could request such data, which could help ICE monitor the contractor's compliance with this requirement, but they do not conduct this monitoring due to other operational demands. Our analysis of contractor data indicated that, since February 2021 when contractor officials said they began offering presentations more widely, a minority of relevant participants attended or viewed a presentation. Specifically, according to our analysis, about 17 percent of participants who ERO enrolled in ATD after August 1, 2020 and assigned to contractor sites for at least 30 days from March through October 2021 attended or viewed a virtual presentation.<sup>83</sup>

Beyond the ATD contract requiring that ICE assess the contractor against specific performance standards as previously discussed, DHS and ICE guidance for CORs states that contract administration is to more broadly involve activities to ensure that the contractor fulfills all of its responsibilities under the contract and begins when the contract is

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<sup>82</sup>While the ATD contract requires that the contractor schedule legal orientation presentations for participants enrolled at contractor sites, contractor officials stated that, although they encourage ATD participants to attend or view a presentation, they do not force participants who refuse. These officials also stated that participants are generally interested in attending the presentations, although the virtual format during the COVID-19 pandemic may be less convenient. Accordingly, attendance at presentations is a relevant indicator of the extent to which the contractor is effectively providing participants with access to presentations.

<sup>83</sup>We based our analysis on attendance data the contractor extracted from its database in November 2021. We focused our analysis on participants who ERO assigned to contractor sites for at least 30 days because contractor officials stated that time may elapse between when ERO enrolls an individual at a site and when the individual participates in a presentation. Contractor officials also noted that the data they collect might undercount the number of individuals who attend presentations. This is because the contractor identifies participants who watch the recorded version of the presentation online by the personal email address they enter to access the presentation. If the email address a participant enters does not match the address in the contractor's records, then contractor officials cannot determine which participant viewed the presentation and they do not record the viewing in their database. Contractor officials noted that they have seen a decrease in this occurring over time and were able to match 77 percent of email addresses entered during October 2021 to participants in their database.

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awarded.<sup>84</sup> We recognize that the pandemic has presented unforeseen challenges to meeting this requirement. However, given that ICE decided to require the contractor to provide presentations as one of few new requirements in the ATD contract and the challenges the contractor has experienced providing them, monitoring the contractor's compliance would help provide ICE with reasonable assurance that the contractor is offering the presentations consistent with the contract.

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## Conclusions

In recent years, ICE has increasingly used the ATD program to provide case management and electronic monitoring of individuals it releases into the community while they await resolution of their immigration court proceedings. While ICE has taken steps to implement program policies, collect program data, and oversee the contract, further actions could improve its implementation, assessment, and oversight of the program and its \$2.2 billion contract.

Specifically, with respect to policy implementation, developing a mechanism for ERO field officials to record supervision reviews and using the information to regularly monitor their completion would help ICE to better ensure that field officials are allocating limited technology monitoring resources effectively.

With respect to program assessment, establishing performance goals with measurable targets that cover core program activities and participant compliance and outcomes would position ICE to assess the extent to which the program is achieving intended results and identify the need for any improvements. Additionally, taking steps to improve its external reporting of absconson information could help ICE present a more complete picture of the program's performance related to absconsions. It would also help ensure policymakers have the context needed to appropriately use the information to inform policy and budgetary decisions.

In addition, conducting, recording, and using oversight activities to assess whether the contractor is meeting the acceptable quality levels for all performance standards would help ICE ensure that the contractor is achieving outcomes identified in the contract and hold the contractor accountable for providing services paid for by the government. While ICE officials stated they face challenging resource constraints, taking these

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<sup>84</sup>*Contracting Officer Representative (COR) Guidebook* (October 2019); U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations, *Contracting Officer's Representative Supplement*, Version 1.0 (October 2015).

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steps would allow ICE to provide a level of oversight commensurate with the ATD contract. Additionally, taking steps to ensure the contractor addresses case file audit findings and that ICE documents their resolution would help provide ICE with reasonable assurance that the contractor is correcting identified issues and providing appropriate supervision of and services to ATD participants. Finally, monitoring whether the ATD contractor is providing participants with access to legal orientation presentations would help provide ICE with reasonable assurance that the contractor is offering the presentations consistent with the contract.

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## Recommendations for Executive Action

We are making the following 10 recommendations to ICE:

The Director of ICE should develop a mechanism for ERO to record the completion of ATD supervision reviews. (Recommendation 1)

The Director of ICE should regularly monitor the information on ATD supervision reviews to ensure that the reviews occur according to policy. (Recommendation 2)

The Director of ICE should establish performance goals with measurable targets for the ATD program that cover core program activities and participant outcomes. (Recommendation 3)

The Director of ICE should include information on absconsions relative to the population of both active and unenrolled participants when externally reporting absconsion information for the ATD program. (Recommendation 4)

The Director of ICE should consistently explain ICE's methodology for calculating absconsion statistics when externally reporting absconsion information for the ATD program. (Recommendation 5)

The Director of ICE should ensure that its oversight activities collect the information needed to assess all performance standards in the contract. (Recommendation 6)

The Director of ICE should ensure the results of its oversight activities are recorded in a manner that allows for analysis of the contractor's overall performance against each standard. (Recommendation 7)

Once ICE collects the information needed to assess all performance standards and records the results in a manner that allows for analysis, the Director of ICE should use the oversight findings to assess whether the



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contractor is meeting the acceptable quality levels for all performance standards and document the results. (Recommendation 8)

The Director of ICE should take steps to ensure that the ATD program contractor addresses findings identified through case file audits and that ICE documents their resolution. (Recommendation 9)

The Director of ICE should monitor whether the ATD contractor is providing participants with access to legal orientation presentations as required by the contract. (Recommendation 10)

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## Agency Comments

We provided a draft of this report to DHS and the Department of Justice for review and comment. DHS provided written comments, which are reproduced in appendix II. DHS and the Department of Justice also provided technical comments on our draft report, which we incorporated as appropriate. DHS concurred with all 10 of our recommendations and described actions planned or underway that, if implemented fully, should address the intent of eight of the recommendations. For the remaining two, DHS needs to take actions beyond those it described to more fully meet the intent of the recommendations.

Specifically, regarding our third recommendation that ICE establish performance goals with measurable targets for the ATD program that cover core program activities and participant outcomes, DHS concurred with the recommendation and stated that ERO will explore additional performance goals to measure program success and core program activities. However, DHS did not indicate that ICE will consider performance goals to measure ATD participant outcomes. To fully meet the intent of our recommendation, ICE should establish and assess performance goals that take into account the final outcomes of ATD participants after ERO unenrolls them and places them on other conditions of release. Doing so will allow ICE to have a more complete picture of the performance of the ATD program, including gathering insights to help evaluate decisions and timing for unenrolling individuals from the program.

Regarding our sixth recommendation that ICE ensure its oversight activities collect the information needed to assess all performance standards in the contract, DHS concurred with the recommendation and stated that ERO plans to assess the data it currently collects on the ATD program to identify additional performance measures. While establishing additional performance measures could be helpful in assessing program performance, especially as it relates to our third recommendation that ICE

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establish performance goals with measurable targets, the intent of our sixth recommendation is for ICE to collect the information it needs to be able to assess the contractor's performance against the contract requirements. To meet the intent of our sixth recommendation, ICE should collect information needed to assess the contractor against all 17 performance standards in the contract, such as whether the contractor is providing translator services for at least 95 percent of applicable cases, as required. Doing so would help position ICE to assess the contractor's performance as prescribed by the contract and hold the contractor accountable for providing services as paid for by the government.

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

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

A handwritten signature in black ink that reads "Rebecca Gambler". The signature is written in a cursive, flowing style.

Rebecca Gambler  
Director, Homeland Security and Justice

# Appendix I: Additional Data on Alternatives to Detention Program Participation

This appendix provides additional details on participation in the Alternatives to Detention (ATD) program, including information on those who absconded from the program, the number of participants enrolled by geographic area, the number of contractor referrals to community service providers, and changes to ATD participants' assigned electronic monitoring technologies. Unless otherwise stated, all data presented include participants who were active in the ATD program at some point during the period of November 1, 2014, when the contractor began using a new database, through December 31, 2020.

## Absconsion Data

Enforcement and Removal Operations (ERO) considers ATD participants to have absconded if the individual flees from their current address without any notification or forwarding information and neither the contractor nor ERO can locate the individual. As shown in table 7, the proportion of ATD participants who absconded from November 2014 through December 2020 varied by ERO's field offices' geographic areas of responsibility, ranging from 50 percent in El Paso and San Antonio to 5 percent in Boston. This means that of the total number of participants who ERO assigned to the El Paso field office's area of responsibility, for example, half absconded from the program. The average absconsion rate across all field office areas of responsibility over this time period was 17 percent.

**Table 7: Alternatives to Detention (ATD) Absconsion Numbers and Rates by Enforcement and Removal Operations Field Office Area of Responsibility, November 2014-December 2020**

Area of responsibility	Number of ATD participants	Number of ATD participants unenrolled for absconding	Absconsion rate (percentage)
El Paso	7,858	3,925	50
San Antonio	11,450	5,687	50
Phoenix	6,728	2,341	35
Chicago	15,650	3,511	22
Atlanta	21,339	4,361	20
San Diego	7,790	1,529	20
Houston	14,739	2,867	19
New Orleans	19,393	3,681	19
Salt Lake City	6,350	1,073	17
Denver	4,258	694	16
Buffalo	1,256	191	15

**Appendix I: Additional Data on Alternatives to Detention Program Participation**

<b>Area of responsibility</b>	<b>Number of ATD participants</b>	<b>Number of ATD participants unenrolled for absconding</b>	<b>Absconson rate (percentage)</b>
Philadelphia	7,161	1,030	14
Dallas	9,821	1,358	14
Miami	37,631	5,182	14
Detroit	13,251	1,813	14
St. Paul	6,683	907	14
Baltimore	11,519	1,514	13
Washington, D.C.	15,266	1,964	13
New York	16,921	1,985	12
Newark	13,605	1,586	12
Los Angeles	27,354	3,160	12
San Francisco	24,492	2,388	10
Seattle	6,651	587	9
Boston	13,035	701	5
<b>Nationwide</b>	<b>320,201</b>	<b>54,035</b>	<b>17</b>

Source: GAO analysis of U.S. Immigration and Customs Enforcement contractor data | GAO-22-104529

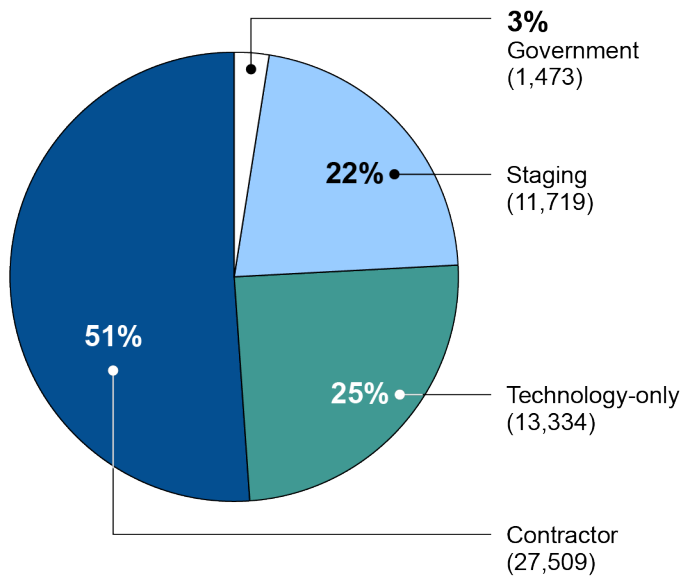
Notes: The number of ATD participants in each field office area of responsibility includes all participants who had active time in the program from November 2014 through December 2020 and who Enforcement and Removal Operations (ERO) assigned to that field office area of responsibility at the time the data were extracted in May 2021. ERO established a 25th field office in July 2021—after our period of analysis—that is not included in the table. ATD participants may move between field office areas of responsibility during their time in the ATD program. ERO considers participants moving from ATD staging sites, typically located near the southwest border, as assigned to their starting field office while in transit to their destination. We calculated the absconson rate by dividing the number of ATD participants who ERO unenrolled from the program for absconding by the total number of ATD participants and multiplied by 100 to obtain a percentage.

According to our analysis, about half (51 percent) of those who absconded from the ATD program over this time period were assigned to contractor sites at the time they absconded, as shown in figure 13.<sup>1</sup> A quarter absconded from technology-only sites, slightly less than a quarter

<sup>1</sup>At contractor sites, case specialists perform a full enrollment for ATD participants and develop an individualized service plan to provide the participant with both electronic monitoring and case management services, as directed by ERO officials.

from staging sites, and about 3 percent from government sites.<sup>2</sup> According to ATD officials, ERO first enrolls many ATD participants at staging sites, typically located along the southwest border, before transferring them to another type of site once the participants have arrived at their destination. ATD headquarters officials said that their preference is to assign newly-enrolled ATD participants to contractor sites when possible due to the higher levels of supervision provided by contractor case specialists at those sites. According to ATD headquarters officials, ERO uses technology-only sites for participants who ERO determines to be at low risk of absconding or who live too far from contractor or government sites.

**Figure 13: Alternatives to Detention (ATD) Sites from Which ATD Participants Absconded, November 2014-December 2020**



Source: GAO analysis of U.S. Immigration and Customs Enforcement contractor data. | GAO-22-104529

Notes: Percentages do not sum to 100 due to rounding. The ATD site type indicates to which type of site Enforcement and Removal (ERO) assigned the participant at the time ERO unenrolled the participant from the ATD program for absconding. ATD participants often move between different types of ATD sites while in the program. ATD began a maintenance site pilot program, in which

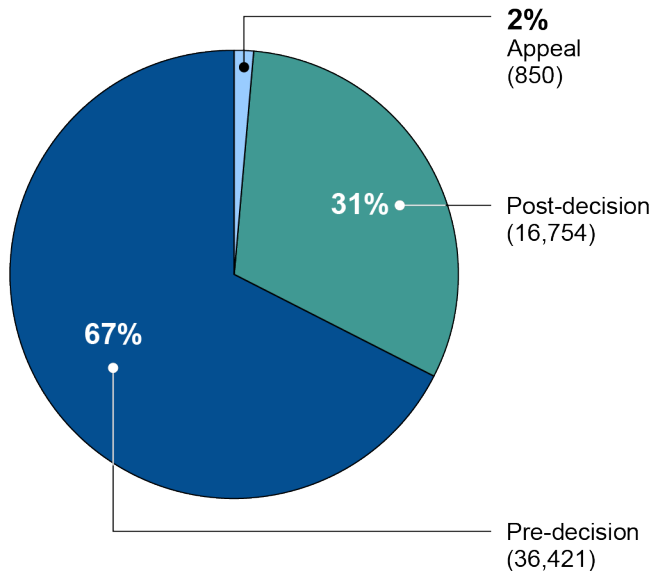
<sup>2</sup>At staging sites, contractor case specialists or ERO officials perform initial enrollments for new participants and use technology as directed by ERO officials to monitor them as they travel to their final location. Government sites are located at government-owned offices, where similar to contractor sites, contractor case specialists provide both electronic monitoring and case management services. At technology-only sites, ERO field officials electronically monitor participants remotely, such as through GPS, and the contractor does not provide case management services.

**Appendix I: Additional Data on Alternatives to Detention Program Participation**

certain participants receive limited monitoring, in December 2020. Because the pilot was active for less than a month during our period of analysis, this figure excludes maintenance site participants.

Our analysis also showed that about two-thirds of participants who absconded did so before receiving a decision on their immigration case, as shown in figure 14. A little less than one-third absconded after receiving a decision on their immigration case and about 2 percent did so while their case was under appeal.

**Figure 14: Immigration Court Case Status for Alternatives to Detention (ATD) Participants who Absconded, November 2014-December 2020**



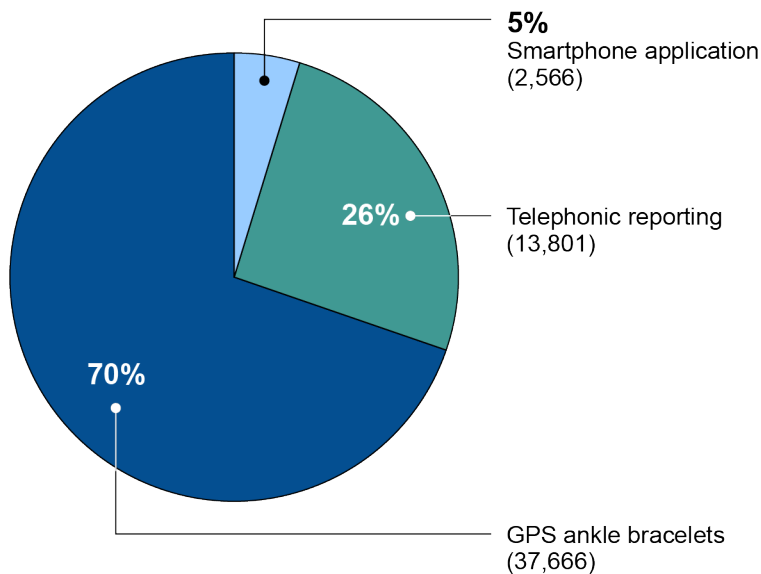
Source: GAO analysis of U.S. Immigration and Customs Enforcement contractor data. | GAO-22-104529

Notes: The figure shows the case status for participants who absconded at the time Enforcement and Removal (ERO) unenrolled them from the ATD program. Participants with a case status of “pre-decision” have not yet received a decision resolving their removability and eligibility for any requested relief or protection from removal, or otherwise disposing of their case, from an immigration judge. A participant may or may not have attended their scheduled hearings prior to a decision being made. Participants with a case status of “post-decision” have received a decision resolving their case, including approval of an application for relief or an order of removal, among other dispositions, from an immigration judge. Participants with a case status of “appeal” chose to appeal the decision of the immigration judge to the Board of Immigration Appeals and remain under U.S. Immigration and Customs Enforcement (ICE) supervision while their appeal is underway. For the purposes of ATD management and data, ICE considers a case as returning to the post-decision stage once the Board of Immigration Appeals renders a decision, including if the participant has a pending federal court appeal.

Figure 15 shows the type of electronic monitoring ERO assigned ATD participants at the time ERO unenrolled from the program for absconding. ERO assigned GPS ankle bracelets to about 70 percent of participants who absconded, telephonic reporting that uses voice recognition to about

26 percent, and a smartphone application that uses facial matching technology to about 5 percent.<sup>3</sup> ATD policy instructs officials to assign most participants to a higher level of electronic monitoring, such as GPS ankle bracelets, when they enter the program. If participants demonstrate compliance, ERO may reassign them to a lower level of electronic monitoring such as the smartphone application or telephonic reporting. ATD policy also states that officials should assign GPS ankle bracelets to those who have received a final order of removal from an immigration judge, as appropriate based on the participant’s circumstance.

**Figure 15: Type of Electronic Monitoring Assigned to Participants who Absconded from the Alternatives to Detention (ATD) Program, November 2014-December 2020**



Source: GAO analysis of U.S. Immigration and Customs Enforcement contractor data. | GAO-22-104529

Notes: Percentages do not sum to 100 due to rounding. This figure shows the type of electronic monitoring technology Enforcement and Removal Operations (ERO) assigned participants at the time it unenrolled them from the program for absconding. ERO began assigning the smartphone application to ATD participants in 2018.

### Geographic Dispersion of ATD Participants

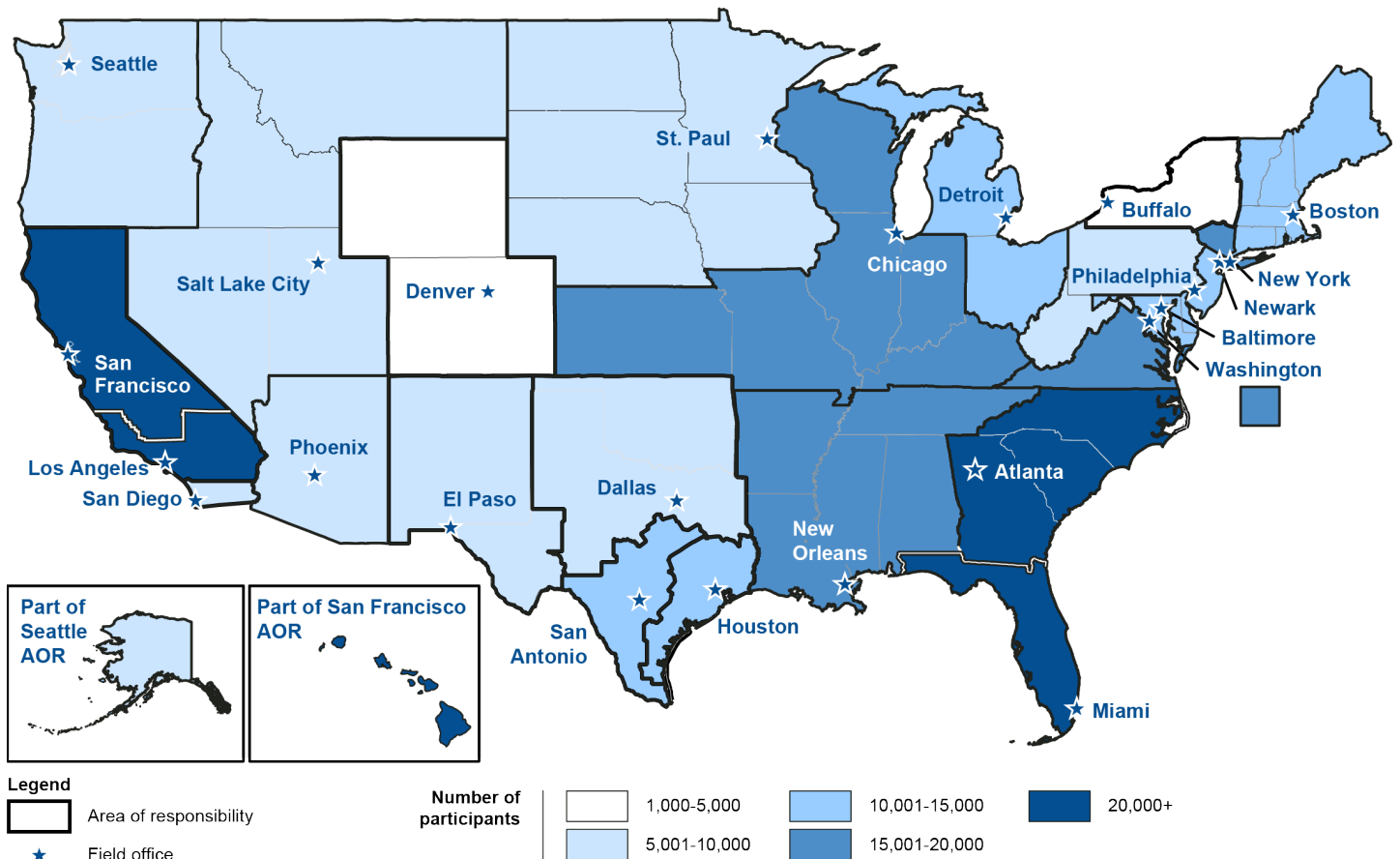
The number of participants enrolled in ATD varied by geographic location, with some ERO field office areas of responsibility, such as Miami and San Francisco, having more than 20,000 participants from November 2014 through December 2020 and others, such as Buffalo and Denver, having

<sup>3</sup>Percentages do not sum to 100 due to rounding. ERO began to assign the smartphone application to ATD participants in 2018.

**Appendix I: Additional Data on Alternatives to Detention Program Participation**

fewer than 5,000. Figure 16 shows the distribution of ATD participants by ERO field office area of responsibility.

**Figure 16: Number of Alternatives to Detention (ATD) Participants by Enforcement and Removal Operations Field Office Area of Responsibility (AOR), November 2014-December 2020**



Source: GAO analysis of U.S. Immigration and Customs Enforcement contractor data. | GAO-22-104529

Note: ATD participants may move between AORs while in the ATD program. This map shows the number of ATD participants based on the AOR to which Enforcement and Removal Operations (ERO) assigned them when the data were extracted in May 2021. ERO established a 25th field office in July 2021—after our period of analysts—that is not included in the figure.

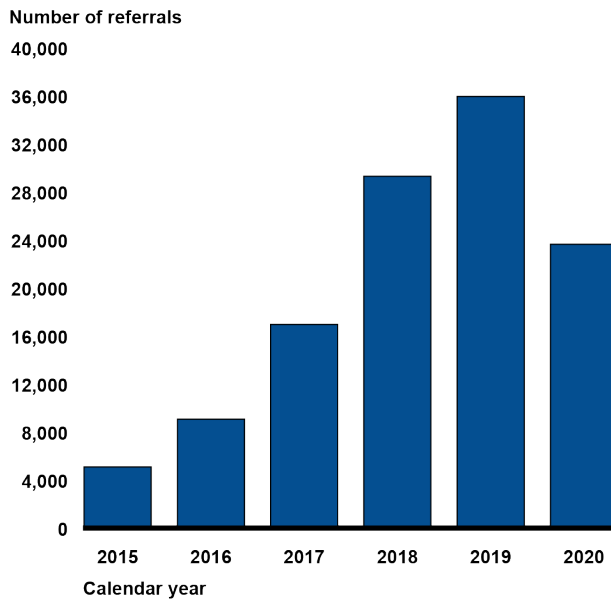
**Number of Referrals Made to Community Providers by Year**

The contractor may give ATD participants at contractor and government sites referrals to community service providers for additional support, if needed. These services range from medical and dental care to food and clothing assistance. Our analysis showed that from 2015 through 2020, the contractor provided ATD participants about 120,100 referrals for community services. Figure 17 shows that the number of referrals made



increased more than four-fold from 2015 to 2020, from about 5,100 in 2015 to about 23,700 in 2020. The number of newly enrolled participants in the ATD program more than doubled between 2015 and 2020.

**Figure 17: Number of Community Service Provider Referrals by Calendar Year, 2015-2020**



Source: GAO analysis of U.S. Immigration and Customs Enforcement contractor data. | GAO-22-104529

Note: This figure shows the number of referrals contractor officials provided to Alternatives to Detention program participants. One participant may receive more than one referral, if the participant needs multiple support services. Only participants enrolled at contractor and government sites are eligible for these referrals. The year was determined by the date the contractor provided the referral to the participant.

## Length of Time before Supervision Changes by Year

ATD policy requires ERO field officials to routinely review the supervision levels assigned to ATD participants, including the type of electronic monitoring technology. The 2017 ATD Handbook and a policy memo from March 2021 establish that supervision reviews should begin at enrollment and continue every 30 days thereafter. While ICE does not collect data on the frequency of supervision reviews, it collects data showing how often participants receive a change in their electronic monitoring technology based on supervision reviews.

According to our analysis, from 2018 through 2020, ERO assigned about 89 percent of ATD participants who had not yet received a decision on their immigration proceedings their first change in technology more than

**Appendix I: Additional Data on Alternatives to Detention Program Participation**

60 days after enrolling in the program, as shown in table 8. While the number of participants in each category of time elapsed was relatively similar for 2018 and 2019, in general, more time passed in 2020 before ATD participants received their first change in technology than in the prior 2 years. In particular, the proportion of participants who spent more than a year before receiving their first change increased from 12 percent in 2019 to 39 percent in 2020.

**Table 8: Length of Time Elapsed Before Alternatives to Detention (ATD) Participants Received Their First Technology Change by Calendar Year, 2018-2020**

Time elapsed	Percentage and number			
	2018	2019	2020	Overall
< 7 days	2 (397)	1 (384)	2 (208)	2 (989)
Between 1 week and 30 days	4 (1,072)	5 (1,298)	3 (334)	4 (2,704)
Between 31 and 60 days	6 (1,662)	6 (1,791)	3 (369)	6 (3,822)
Between 61 and 90 days	11 (3,047)	10 (2,727)	4 (521)	9 (6,295)
Between 91 and 180 days	36 (9,714)	36 (10,065)	14 (1,780)	32 (21,559)
Between 181 and 365 days	27 (7,372)	30 (8,560)	36 (4,527)	30 (20,459)
More than a year	14 (3,742)	12 (3,319)	39 (4,907)	18 (11,968)

Source: GAO analysis of U.S. Immigration and Customs Enforcement contractor data | GAO-22-104529

Note: This table includes data for 67,796 participants who had not yet received a court decision because ATD policy requires that Enforcement and Removal Operations (ERO) field officials conduct supervision case reviews within the first 30 days after enrolling participants and ERO enrolls the majority of ATD participants before they receive a court decision.

# Appendix II: Comments from the Department of Homeland Security

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



June 6, 2022

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

Re: Management Response to Draft Report GAO-22-104529, "ALTERNATIVES TO DETENTION: ICE Needs to Better Assess Program Performance and Improve Contract Oversight"

Dear Ms. Gambler:

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

The Department is pleased to note GAO's recognition of the improvements the U.S. Immigration and Customs Enforcement (ICE) has made to provide Wraparound Stabilization Services, such as mental health counseling and repatriation and reintegration services to participants in the Alternatives to Detention (ATD) program. ICE has continually worked with non-governmental organizations to improve and streamline the processes for approving services, such as eliminating the need to obtain ICE approval before services are rendered to program participants.

The ATD program, which is managed by the ICE Enforcement and Removal Operations (ERO), is a noncitizen compliance tool that uses technology and case management protocols to monitor compliance with final orders of removal or with release conditions while a noncitizens' immigration proceedings are pending on the non-detained docket. This program seeks to increase compliance with release conditions, court appearances and final orders of removal while allowing noncitizens to remain within communities in the United States. As such, ICE remains committed to (1) ensuring that noncitizens who are enrolled are monitored with the appropriate level of oversight, and (2) conducting the quality assurance necessary to ensure continued effectiveness of the program.

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**Appendix II: Comments from the Department  
of Homeland Security**

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The draft report contained 10 recommendations with which the Department concurs. Enclosed, please find our detailed response to each recommendation. DHS previously submitted technical comments addressing several accuracy, contextual, and other issues under a separate cover for GAO's consideration.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Sincerely,

JIM H  
CRUMPACKER

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CRUMPACKER  
Date: 2022.06.06 10:35:34 -0400'

JIM H. CRUMPACKER, CIA, CFE  
Director  
Departmental GAO-OIG Liaison Office

Enclosure

**Enclosure: Management Response to Recommendations  
Contained in GAO-22-104529**

GAO recommended that the Director of ICE:

**Recommendation 1:** Develop a mechanism for ERO to record the completion of ATD supervision reviews.

**Response:** Concur. ICE ERO is currently considering changes to the program based on operational needs, which may result in policy changes that will provide a more feasible level of oversight and monitoring for supervision reviews. As GAO noted, the ATD program has grown tremendously in the past several years and has more than doubled from approximately 53,000 participants in 2015 to 239,957 current participants as of May 7, 2022. Assessing supervisor reviews for 239,957 participants every 30 days is operationally challenging since the level of program resources has not matched the pace of the program's growth. To overcome these challenges, ICE ERO will conduct data analysis on all cases to identify how many cases have been reviewed and which cases need review. Further, ERO will perform spot checks on the cases that have not been reviewed. Following these actions, ICE ERO will determine what additional action is needed to ensure recording the completion of ATD supervision reviews, as appropriate. Estimated Completion Date (ECD): May 31, 2023.

**Recommendation 2:** Regularly monitor the information on ATD supervision reviews to ensure that the reviews occur according to policy.

**Response:** Concur. ICE ERO is currently considering changes to the ATD program based on operational needs, which may result in changes to policy and guidance previously issued that shortened the supervision review period from 90 days to 30 days. Potential changes to policy and guidance may include providing a more feasible level of oversight and monitoring for supervision reviews. ECD: May 31, 2023.

**Recommendation 3:** Establish performance goals with measurable targets for the ATD program that cover core program activities and participant outcomes.

**Response:** Concur. In July 2021, ICE developed a performance goal of examining the percentage of ATD participants who demonstrate compliance with program requirements, with a target level of 85 percent for fiscal year 2022. ERO will conduct analysis for this performance goal and explore additional performance goals to measure program success and core program activities, such as: (1) whether someone was referred to services; (2) court tracking assignment; and (3) the rate of court appearances. ECD: May 31, 2023.

**Recommendation 4:** Include information on absconsions relative to the population of both active and unenrolled participants when externally reporting absconsion information for the ATD program.

**Response:** Concur. ICE ERO ATD is in the process of aligning its absconsion methodology for the program to report on absconsions relative to both active and unenrolled program participants. Once this is complete, the ATD program will work with the appropriate offices within ICE to publish the revised methodology on public-facing websites such as [www.ICE.gov](http://www.ICE.gov). ERO has also formed a working group to evaluate all current termination codes to appropriately capture all unenrollments. Once completed, ERO will develop and disseminate guidance on this change in methodology. ECD: September 30, 2022.

**Recommendation 5:** Consistently explain ICE's methodology for calculating absconsion statistics when externally reporting absconsion information for the ATD program.

**Response:** Concur. Once ICE ERO ATD has completed revising its methodology, and is prepared to publicly report absconsions based on active and unenrolled participants, ERO will disseminate additional guidance on this change in methodology. This will include broadcast messages, talking points, and other written materials. ECD: September 30, 2022.

**Recommendation 6:** Ensure that its oversight activities collect the information needed to assess all performance standards in the contract.

**Response:** Concur. ICE ERO will assess the data it currently collects on the ATD program and its participants to identify additional performance measures. For instance, ERO is considering enhancing the program oversight activities by calculating success and failure rates based on the reasons for which participants are unenrolled, absconsion rates, and court appearance rates. By establishing these performance measures, it will help ensure a shared understanding of the priorities of the ATD program across ERO. ECD: May 31, 2023.

**Recommendation 7:** Ensure the results of its oversight activities are recorded in a manner that allows for analysis of the contractor's overall performance against each standard.

**Response:** Concur. ICE ERO will assess its contract oversight activities to improve its methodology and assess all 17 performance standards. Additionally, ERO will collect and record the information, including the root cause for errors, if applicable, and the corrective action, to enable analysis of the contractor's overall performance. Following this action, ERO will then be able to meaningfully use the results of the analysis to

determine whether the contractor is meeting all standards outlined in the contract. ECD: May 31, 2023.

**Recommendation 8:** Once ICE collects the information needed to assess performance standards and records the results in a manner that allows for analysis, use the oversight findings to assess whether the contractor is meeting acceptable quality levels for all performance standards and document the results.

**Response:** Concur. ICE ERO Headquarters will use the information collected on contract performance to assess whether the contractor is meeting the acceptable quality levels for all 17 performance standards. ERO will then document the results of the assessment to ensure the contractor is achieving outcomes, as identified in the contract, and hold the contractor accountable for providing services as paid for by the government. ECD: May 31, 2023.

**Recommendation 9:** Take steps to ensure that the ATD program contractor addresses findings identified through case file audits and that ICE documents their resolution.

**Response:** Concur. ICE ERO plans to enhance its current process for reviewing contractor performance as it pertains to billing, to include other aspects of contract performance against the 17 performance standards outlined in the contract. ERO ATD program officials conducting quality assurance will document the contractor's actions to address any audit findings and follow-up to confirm the contractor takes actions to resolve case file audit findings. ECD: May 31, 2023.

**Recommendation 10:** Monitor whether the ATD contractor is providing participants with access to legal orientation presentations as required by the contract.

**Response:** Concur. ICE ERO ATD will ensure the contractor is collecting the data needed to verify that all new ATD program participants have received "Know Your Rights" presentation, including when the presentation was provided to a participant and whether a participant refused the presentation (if it was provided in person). However, it is important to note that—while ATD program participants are responsible for viewing the presentation—ERO cannot require that all new ATD participants view the presentation. ERO will also conduct periodic reviews of the contractor data to ensure the contractor has successfully sent the presentation to new enrollees. This may be a link to an online presentation, in-person engagement, or a combination thereof, as appropriate. ECD: May 31, 2023.

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# Appendix III: GAO Contact and Staff Acknowledgments

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## GAO Contact

Rebecca Gambler, (202) 512-8777, [gablerr@gao.gov](mailto:gablerr@gao.gov)

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## Staff Acknowledgments

In addition to the contact named above, Taylor Matheson (Assistant Director), Brendan Kretschmar (Analyst-in-Charge), Hiwotte Amare, David Bieler, Benjamin Crossley, Dominick Dale, Elizabeth Dretsch, Haley Dunn, Thomas Friend, Sasan J. “Jon” Najmi, Anna Beth Smith, and Tatiana Winger made key contributions to this report.



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