



September 2013

SEX OFFENDERS

ICE Could Better Inform Offenders It Supervises of Registration Responsibilities and Notify Jurisdictions when Offenders Are Removed

GAO Highlights

Highlights of [GAO-13-832](#), a report to congressional requesters

Why GAO Did This Study

ICE-ERO uses orders of supervision to release from custody criminal aliens—including sex offenders—who have been ordered to be removed from the United States, but cannot be removed for various reasons or detained indefinitely under U.S. Supreme Court precedent. In July 2006, SORNA was enacted, which established minimum standards for sex offender registration and notification. Congressional requesters asked GAO to assess registration of alien sex offenders. This report addresses the extent to which alien sex offenders (1) under ICE-ERO order of supervision are registered and (2) who are removed or released under ICE-ERO order of supervision are informed of registration requirements and relevant jurisdiction officials are notified about these offenders. GAO analyzed a representative sample of 131 of 1,309 alien sex offenders who were under orders of supervision as of September 2012. GAO also interviewed officials from ICE-ERO, the SMART Office, and other relevant federal, state registry and local law enforcement agencies.

What GAO Recommends

GAO recommends, among other things, that ICE-ERO (1) set a deadline for its review of options for providing notifications to and about alien sex offenders under supervision and (2) in consultation with SMART and others, consider options for notifying jurisdictions about removed offenders. ICE agreed with the recommendations.

View [GAO-13-832](#). For more information, contact Eileen R. Larence at (202) 512-8777 or larencee@gao.gov.

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ICE Could Better Inform Offenders It Supervises of Registration Responsibilities and Notify Jurisdictions when Offenders Are Removed

What GAO Found

On the basis of GAO's analysis of a representative sample of 131 alien sex offenders under U.S. Immigration and Customs Enforcement (ICE) supervision, GAO estimates that as of September 2012, 72 percent of alien sex offenders were registered, 22 percent were not required to register, and 5 percent did not register but should have. According to officials, offenders were not required to register for various reasons, such as the offense not requiring registration in some states. Of the 6 offenders in GAO's sample that should have registered, officials from ICE's Enforcement and Removal Operations (ICE-ERO) field offices informed 4 of their registration requirements. However, officials at some of these field offices identified several reasons why they did not ensure that these offenders actually registered. For example, the offender may have moved and no longer resided in the area of responsibility for that particular field office. ICE had not informed the remaining 2 offenders of their registration requirements.

Alien sex offenders are not consistently informed of potential registration requirements, and relevant jurisdiction officials—that is, state, territorial, and tribal sex offender registry and law enforcement officials—are not consistently notified when an offender is removed from the country or released. The Sex Offender Registration and Notification Act of 2006 (SORNA) and other federal laws identify when sex offenders and relevant jurisdiction officials should be notified. However, the agencies that have these notification responsibilities are limited in their ability to provide information to and about alien sex offenders, in part because they do not know when ICE-ERO will release or remove these offenders. ICE-ERO has a procedure in place to inform alien sex offenders who are being removed about potential registration requirements, but not alien sex offenders who are being released into the community under supervision, primarily because ICE-ERO is uncertain whether it has a responsibility to do so. ICE-ERO also does not consistently notify relevant jurisdiction officials when an alien sex offender is removed or released under supervision, for similar reasons. However, officials from the Department of Justice's Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) Office said that state correctional facilities, in the interest of public safety, have notification processes in place, even though sometimes not required to do so. ICE-ERO is reviewing options for informing alien sex offenders under supervision about their potential registration requirements and notifying jurisdictions when alien sex offenders are released under supervision, but has not established a deadline for completing its review, which is inconsistent with project management standards. Without a deadline, it will be difficult to hold ICE-ERO accountable for providing these notifications. Further, ICE-ERO does not plan to notify relevant jurisdictions when an alien sex offender is removed. Providing such notification could help jurisdictions ensure public safety and avoid unnecessarily spending resources trying to locate the offender.

This is a public version of a sensitive security report GAO issued in August 2013, which also included information about steps ICE has taken to determine its responsibility for informing alien sex offenders of their notification requirements.

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Abbreviations

BOP	Federal Bureau of Prisons
DHS	Department of Homeland Security
DOJ	Department of Justice
FBI	Federal Bureau of Investigation
ICE	Immigration and Customs Enforcement
ICE-ERO	ICE Enforcement and Removal Operations
NCIC	National Crime Information Center
NSOR	National Sex Offender Registry
OPLA	Office of the Principal Legal Advisor
SMART	Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking
SORNA	Sex Offender Registration and Notification Act of 2006
USMS	U.S. Marshals Service

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September 12, 2013

Congressional Requesters

The Enforcement and Removal Operations directorate of U.S. Immigration and Customs Enforcement (ICE-ERO) is responsible for the identification, apprehension, detention, and removal of removable aliens.¹ ICE-ERO prioritizes the removal of convicted criminals, among other groups. However, there are circumstances in which criminal aliens who have been ordered removed from the United States—including those convicted of a sex offense—cannot be removed. For example, a criminal alien may not be removed because the designated country will not accept the alien's return. The decision of the U.S. Supreme Court in *Zadvydas v. Davis* imposes strict limits on ICE's ability to detain aliens beyond 6 months after the issuance of a final order of removal if removal is not significantly likely in the reasonably foreseeable future.² In these instances, ICE-ERO may release the alien into the community under an order of supervision.³ According to U.S. Immigration and Customs Enforcement (ICE), of the 59,347 aliens under an order of supervision as of September 2012, 2,837 (5 percent) of them had been convicted of a sex offense.

Given the risk that some individuals previously convicted of a sex offense may pose, in July 2006, Congress passed and the President signed the Sex Offender Registration and Notification Act of 2006 (SORNA), which provided a new set of sex offender registration and notification standards, including criminal penalties for those who fail to comply with these

¹An alien is any person who is not a citizen or national of the United States. See 8 U.S.C. § 1101(a)(3).

²533 U.S. 678 (2001).

³See 8 C.F.R. §§ 241.4, 241.5 & 241.13. While under supervision, the alien is required to meet certain conditions, such as not traveling outside of a specified geographic area for more than 48 hours without first notifying the ICE-ERO officer. The alien is also required to meet in person with an ICE-ERO deportation officer at a frequency determined by the officer. During those meetings, the deportation officer determines whether the alien has complied with the conditions of release and checks law enforcement databases—such as the National Crime Information Center (NCIC), which is maintained by the Federal Bureau of Investigation—to determine whether the alien has been arrested, has a warrant out for arrest, or is wanted.

standards.⁴ These standards require convicted sex offenders to register and keep the registration current in the state, territorial, or tribal jurisdictions in which they live, work, and attend school, and for initial registration purposes only, in the jurisdiction in which they were convicted, if such jurisdiction is different from the jurisdiction of residence.⁵ Registration generally entails convicted sex offenders appearing in person at a specified agency—often a local law enforcement agency—within the jurisdiction to provide the agency with personal information, such as name, date of birth, and Social Security number, among other information. The law enforcement agency enters this information into the jurisdiction’s sex offender registry, and the agency that manages the jurisdiction’s registry—such as the state police department, department of public safety, or the attorney general’s office—enters this information into the national sex offender registration system, composed of a national database and a national website. The national database, called the National Sex Offender Registry (NSOR), is operated by the Federal Bureau of Investigation (FBI), while the national website—the Dru Sjodin National Sex Offender Public Website (public website)—is maintained by the Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) Office within the Department of Justice (DOJ).⁶ Using the national registry information, jurisdictions are able to track offenders following their release into the community, which helps ensure public safety in regard to sex offenders, including alien sex offenders who are released but not removed from the country.

This report summarizes the results of the third review, in a series of four, that we are conducting in response to a congressional request that we assess various aspects of SORNA implementation. We completed the first two reviews in February 2013; one on progress that states and territories have made in implementing SORNA, and another on federal efforts to identify registered sex offenders who are traveling

⁴Pub. L. No. 109-248, tit. I, 120 Stat. 587, 590-611.

⁵42 U.S.C. § 16913(a).

⁶Prompted by the November 2003 murder of Dru Sjodin, by a registered sex offender, Alfonso Rodriguez, Jr., the Dru Sjodin National Sex Offender Public Website was created to provide the public with access to sex offender data nationwide.

internationally.⁷ In August 2013, we began another review on progress that tribal jurisdictions have made in implementing SORNA. For this review, we assessed the extent to which aliens living under order of supervision were registered as sex offenders in the jurisdictions of residence. Specifically, this report addresses the following questions:

- (1) To what extent are alien sex offenders under an ICE-ERO order of supervision registered as sex offenders?
- (2) To what extent are alien sex offenders who are removed from the country or released under an ICE-ERO order of supervision informed of registration requirements, and state sex offender registry and law enforcement officials notified about these offenders?

This report is a public version of the prior sensitive report that we provided to you. ICE deemed some of the information in the prior report as For Official Use Only (FOUO), which must be protected from public disclosure. Therefore, this report omits information about additional steps that ICE has taken, or could take, to determine what, if any, responsibility ICE-ERO has with regard to informing alien sex offenders of their registration requirements. The information in this report is more limited in scope as it excludes such sensitive information, but the overall questions and methodology used for both reports is the same.

To address our objectives, we drew a random probability sample of 137 of the 1,369 alien sex offenders who, as of September 2012, were under order of supervision and for whom ICE had a record of the alien's complete date of birth. We subsequently found that six individuals from our sample should not have been included in the population of alien sex offenders under an ICE-ERO order of supervision, resulting in a final sample size of 131 and an estimated total population of 1,309.⁸ Percentage estimates derived from this sample have margins of error at

⁷GAO, *Sex Offender Registration and Notification Act: Jurisdictions Face Challenges to Implementing the Act, and Stakeholders Report Positive and Negative Effects*, [GAO-13-211](#) (Washington, D.C.: Feb. 7, 2013), and *Registered Sex Offenders: Sharing More Information Will Enable Federal Agencies to Improve Notifications of Sex Offenders' International Travel*, [GAO-13-200](#) (Washington, D.C.: Feb. 14, 2013).

⁸Because we found individuals in our sample who should have been excluded from the population, we used the number of these individuals to statistically estimate the true size of the population of relevant individuals.

the 95 percent confidence level of plus or minus 8.08 percentage points.⁹ We chose September 2012 because we requested this information as part of a separate review, and this date provided us with current information at the time.¹⁰

To determine whether each alien sex offender in our sample was registered in the state where the offender resides, in February and March 2013, we searched the public website. On the basis of the search results, we divided the alien sex offenders into three categories: (1) definitely included in the public website, meaning there was an exact match on the name and date of birth for the alien sex offender in the public website; (2) possibly included in the public website, meaning there was a partial or similar name, date of birth, or age in the public website (e.g., J. Smith as opposed to John Smith), but not an exact match; and (3) definitely not included in the public website, meaning the public website did not include the offender's exact name or date of birth or even a partial or similar name, date of birth, or age. For the offenders who were possibly included and definitely not included in the public website, using the addresses ICE-ERO provided to us, we contacted sex offender registration officials in each of the 27 states where these offenders were located to determine whether the officials were aware of the offenders and whether the offenders were registered. We assessed the reliability of the data ICE provided by questioning knowledgeable agency officials and reviewing the data for obvious errors and anomalies. We determined that the data were sufficiently reliable for our purposes.

To determine the extent to which alien sex offenders who are removed from the country or under ICE-ERO order of supervision are informed of registration requirements, and whether relevant sex offender registration and law enforcement officials are notified about these offenders, we reviewed SORNA, other applicable laws, and guidelines developed by the SMART Office to obtain information on federal sex offender registration requirements. We also met with policy officials from the ICE-ERO

⁹Because we followed a probability procedure based on random selection, our sample is only one of a large number of samples that we might have drawn. Since each sample could have provided different estimates, we express our confidence in the precision of our particular sample's results as a 95 percent confidence interval (e.g., plus or minus 8.08 percentage points). This is the interval that would contain the actual population value for 95 percent of the samples we could have drawn.

¹⁰[GAO-13-200](#).

Executive Information and Reporting Unit; the Director and policy advisors for the SMART office; officials from the U.S. Marshals Service (USMS); headquarters officials with the Federal Bureau of Prisons (BOP); and state sex offender registry and local law enforcement officials in Minnesota, Florida, and Maryland. We selected Minnesota and Florida because they are among the states where the largest number of alien sex offenders in our sample who were not included in the public website reside. We selected Maryland because local law enforcement officials in this state had raised concerns about the registration of alien sex offenders during our prior work, which we completed in February 2013.¹¹ In addition, we conducted phone interviews with ICE-ERO field office directors and deputy directors in the field offices that either released or currently supervise the alien sex offenders in our sample who were not registered, but potentially should have been. We also conducted phone interviews with U.S. Marshals Service officials in these same locations. While these officials' perspectives cannot be generalized to all states and to all ICE-ERO and U.S. Marshals Service field offices, they provided insights into the registration of alien sex offenders under order of supervision. We compared the sex offender notification requirements in SORNA and other federal statutes with the notifications that state and federal agencies provide to alien sex offenders to determine if there were any gaps. We then obtained perspectives from the federal, state, and local officials we interviewed on how best to address these gaps. We also compared efforts that ICE-ERO has under way regarding notifications to and about alien sex offenders with internal control standards pertaining to communication with stakeholders and program management standards that involve establishing milestone dates and deadlines.¹² For more information on our scope and methodology, see appendix I.

We conducted this performance audit from January 2013 to September 2013 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence for our findings and conclusions based on our audit objectives. We believe that the evidence obtained

¹¹[GAO-13-211](#).

¹²GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: November 1999), and the Project Management Institute's *The Standard for Program Management* (Newton Square, PA © 2006).

provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

The purpose of SORNA is to protect the public from sex offenders and offenders against children by providing a comprehensive set of sex offender registration and notification standards. These standards require convicted sex offenders, prior to their release from imprisonment or within 3 days of their sentencing if the sentence does not involve imprisonment, to register and keep the registration current in the jurisdictions in which they live, work, and attend school, and for initial registration purposes only, in the jurisdiction in which they were convicted, if such jurisdiction is different from the jurisdiction of residence.¹³ The registration agency also is to document the text of the provision of law defining the criminal offense for which the offender is registered; the criminal history of the offender, including dates of all arrests and convictions, and any other information SORNA or the Attorney General requires. In addition, jurisdictions are to maintain a jurisdiction-wide sex offender registry and adopt registration requirements that are at least as strict as those SORNA established. The length of time that convicted sex offenders must continue to update their registration is life, 25 years, or 15 years, depending on the seriousness of the crimes for which they were convicted and with possible reductions for maintaining a clean record. The frequency with which sex offenders must update or verify their information—either quarterly, semiannually, or annually—also depends on the seriousness of the crime.

NSOR, which is part of the National Crime Information Center (NCIC), is operated by the FBI.¹⁴ The database is accessible to law enforcement officials but not to the public. The public website, which is maintained by SMART, links state, territory, and tribal public notification websites, making sex offender registration information readily available to both law enforcement and the public on a nationwide basis. Using this website, individuals can access information on sex offenders in different jurisdictions. However, state and local authorities that conduct and

¹³42 U.S.C. § 16913.

¹⁴NCIC is an information system that provides law enforcement agencies with around-the-clock access to federal, state, and local crime data, including criminal record histories and wanted and missing person records.

manage sex offender registration and notification activities are exclusively responsible for the inclusion, accuracy, and integrity of the information provided by their respective websites.

SORNA and other federal laws identify certain points in time when sex offenders should be informed of their registration requirements and when relevant jurisdiction officials—that is, state, territorial, and tribal sex offender registry and law enforcement officials—should be informed that a sex offender has been released in their jurisdiction. For example, 42 U.S.C. § 16917 states that, shortly before the release of the sex offender from custody for the offense giving rise to the duty to register, an appropriate official must (1) inform the sex offender of that person’s duties under SORNA and explain those duties, (2) require the sex offender to read and sign a form stating the duty to register has been explained, and (3) ensure that the sex offender is registered. In addition, 18 U.S.C. § 4042(c) requires BOP and federal probation officers to (1) inform the sex offender of the requirements of SORNA and (2) notify the agency responsible for sex offender registration in the jurisdiction in which the sex offender will reside. BOP is required to take these actions if the offender receives a prison sentence; federal probation officers are required to take these actions when the offender is sentenced to probation. See app. II for additional information about these statutory notification requirements.

Most Alien Sex Offenders under ICE-ERO Supervision Were Registered, but About 5 Percent Were Not

On the basis of our analysis of a representative sample of 131 alien sex offenders under ICE supervision, and for whom ICE had a record of the alien’s complete date of birth, we estimate that as of September 2012, 72 percent of alien sex offenders were registered in the jurisdictions where they lived, 22 percent were not required to register, and 5 percent did not register but should have.¹⁵ Twenty-two percent of alien sex offenders in our sample (29 of 131) were not required to register in the states where they reside, according to the sex offender registration officials. Reasons these offenders were not required to register include the following:

¹⁵State registry officials we contacted could not confirm the registration requirements for 1 alien. Percentage estimates have margins of error at the 95 percent confidence level of plus or minus 8.08 percentage points. Percentages do not add to 100 because of rounding.

-
- The specific offense did not require registration in those states or the offense had been committed before registration was required (20 offenders),
 - the period during which the offender was required to register had ended (8 offenders), or
 - the offender was deceased (1 offender).

For example, 1 alien sex offender was convicted of a sex offense in 1997 and was required to register only while he was on probation, which ended in March 2003. Six other alien sex offenders who were convicted of various sex offenses were not required to register because their conviction or supervised release occurred prior to a statutory requirement to register. Another offender, in Texas, was convicted of operating a “sexually oriented business,” which does not require registration as a sex offender.

However, 6 alien sex offenders in our sample (5 percent) should have been registered but were not, which means that, as of September 2012, an estimated 60 alien sex offenders under orders of supervision nationwide, for whom ICE had a record of their complete birthdays, were not registered but should have been.¹⁶ Law enforcement officials reported having no record of 3 of these 6 offenders, but the crimes these aliens committed should have triggered registration. The ICE-ERO field office did not inform 2 of the 6 alien sex offenders about their registration requirements, but did inform the remaining 4 offenders. However, officials at some field offices identified several reasons why they did not ensure that these offenders actually registered. First, the offender may have moved to another state and no longer resided in the area of responsibility for that particular field office. In this instance, it would be incumbent upon the field office that covers the jurisdiction where the offender currently lives to follow up with the offender regarding registration. Second, the officials explained that when aliens report to their deportation officer, the officer is required, among other things, to check NCIC to determine whether the alien has been arrested for any other crimes, the alien is wanted by another law enforcement agency, or there is a warrant for the

¹⁶We are 95 percent confident that the actual number of alien sex offenders under orders of supervision nationwide, for whom ICE had a record of their complete birthdays, who were not registered but should have been is between 22 and 127.

alien's arrest.¹⁷ The deportation officer can, on the officer's own initiative, ask the alien whether or not the alien registered as a sex offender. However, according to ICE-ERO, depending on the individual circumstances, failure to register may not be a sufficient basis to return the alien to ICE custody.

Alien Sex Offenders May Not Be Informed of Potential Registration Requirements, and Jurisdiction Officials May Not Be Notified When an Offender Is Removed or Released

Other state and federal correctional and supervision agencies are limited in the information they can provide to and about alien sex offenders to help ensure that these offenders are registered, but ICE-ERO may be in a position to help address these notification gaps. We found that ICE-ERO informs alien sex offenders who are removed from the country about potential registration requirements, but ICE-ERO does not consistently inform alien sex offenders who are released under ICE-ERO supervision about these requirements. Further, relevant jurisdiction officials may not be notified about the whereabouts of an alien sex offender when an alien sex offender is removed from the country or when an alien sex offender is released under ICE-ERO supervision, which could have an impact on jurisdictions' ability to monitor these offenders if they return to the jurisdictions' communities. ICE-ERO stated that it is assessing options to best accomplish the goal of sex offender notification programs, including incorporating notification requirements for all alien sex offenders released under ICE-ERO supervision. However, ICE-ERO has not identified a deadline for when it will complete its assessment of the various options, nor does ICE-ERO plan to notify jurisdictions when an alien sex offender is removed from the country.

Other Agencies Inform Sex Offenders of Requirements and Notify Jurisdiction Officials, but Are Limited in What They Can Do to Help Ensure Alien Sex Offenders Are Registered

Federal and state correctional and supervision agencies have processes in place to inform sex offenders of their registration requirements and notify jurisdictions when sex offenders are released from criminal custody. However, there are gaps in the information that these agencies can provide regarding alien sex offenders who will be taken into ICE-ERO custody, and ICE-ERO may be in a position to help fill these gaps. For example, we found that BOP has a process in place to inform inmates who are sex offenders about their registration requirements at least 5 days prior to releasing them. Under SORNA, these offenders are then required to register in the jurisdiction where they will reside within 3

¹⁷Deportation officers work with other federal law enforcement officials to identify, locate, and arrest aliens subject to removal and are responsible for ensuring the physical removal of such aliens from the United States.

business days of being released from prison.¹⁸ However, alien sex offenders with final orders of removal who are transferred to ICE-ERO custody upon their release from prison are not able to register immediately. Rather, if these offenders are not removed from the country, they must wait until they are released by ICE-ERO to register. In these instances, it could be as long as 90 days or more from the time when alien sex offenders are informed of their registration requirements until they are actually able to register.¹⁹ According to SMART Office officials—who are responsible for providing guidance to jurisdictions and federal agencies on how to implement SORNA requirements, given the time that would have passed, it would be beneficial to remind alien sex offenders of their potential registration requirements upon their release from ICE-ERO custody.

Federal probation officers, as well as probation officers in the three states included in our review, are also required to inform sex offenders under their supervision about their registration requirements; this includes alien sex offenders who are simultaneously on probation while under ICE-ERO supervision.²⁰ However, not all alien sex offenders are on probation at the same time that they are under ICE-ERO supervision, in which case these offenders may not be informed of their potential registration requirements upon release from ICE-ERO custody.

In addition to informing alien sex offenders of their registration requirements, correctional facilities in some states that we reviewed

¹⁸42 U.S.C. § 16913(b)(2). Depending on the jurisdiction, including whether or not the jurisdiction has substantially implemented SORNA, the sex offender may be allowed more or less time to register upon release from prison.

¹⁹The removal period, including detention pending removal, is generally 90 days but can be extended if the alien fails or refuses to make timely application in good faith for travel or other documents necessary for departure or conspires or acts to prevent removal. 8 U.S.C. § 1231(a)(1)-(2). Prior to removing an alien with a final order of removal, ICE may release the alien under order of supervision if it determines that the alien would not pose a danger to the public or a risk of flight. Alternatively, if the alien poses such a danger or risk, but after approximately 6 months in detention the alien's removal is not significantly likely in the reasonably foreseeable future, ICE will typically release the individual on an order of supervision. See 8 C.F.R. §§ 241.4, 241.5 & 241.13.

²⁰42 U.S.C § 16917(a) and 18 U.S.C. § 4042(c)(3). We were not able to determine whether any of the 131 alien sex offenders in our sample were on probation while under ICE supervision because ICE does not maintain this information in its case management system.

register the offenders while they are incarcerated and before they are transferred to ICE-ERO custody; however, federal correctional facilities are not able to do so. SORNA states that sex offenders shall initially register before completing a sentence of imprisonment with respect to the offense giving rise to the registration requirement and that an appropriate official shall, shortly before release of the offender from custody for such an offense, ensure that the offender is registered.²¹ State registry and local law enforcement officials we interviewed in Florida, Maryland, and Minnesota said that correctional facilities in their states register sex offenders, including alien sex offenders, prior to releasing them. Officials from two of these states also explained that for alien sex offenders who are released from the state correctional facility and immediately taken into ICE custody, the state correctional facility annotates this in the state registration system. Law enforcement officials stated that this enables them to follow up with ICE on the status of the alien sex offender, which helps them to ensure that the information on the status and location of these offenders is current.

BOP, on the other hand, is not able to register sex offenders, including alien sex offenders who will be taken into ICE-ERO custody, prior to their release from prison because federal agencies do not have the authority to register sex offenders; rather, that authority lies exclusively with the states, territories, and tribes. However, according to BOP, even if BOP had the authority to register sex offenders, BOP would not have to do so for alien sex offenders who will be taken into ICE-ERO custody upon their release from a BOP facility. BOP considers this to be a transfer, not a release, from BOP custody to ICE-ERO custody, in which case BOP would not be required to ensure that the offender is registered prior to the offender leaving the BOP facility.²² Federal law also requires BOP to notify registry and law enforcement officials in the jurisdiction where the offender will reside that the offender has been released from custody.²³ However, BOP does not provide this notice for alien sex offenders who

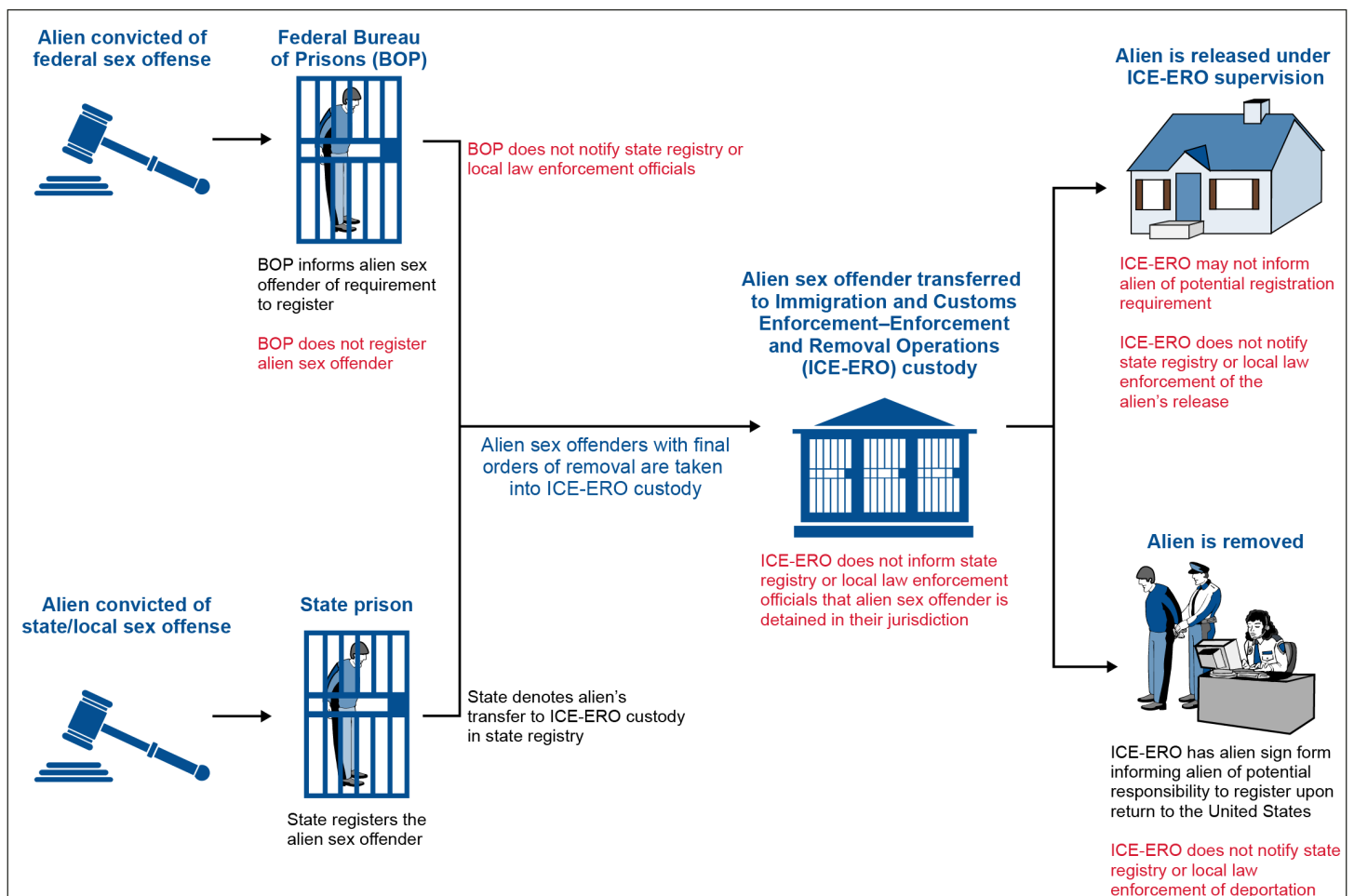
²¹42 U.S.C. §§ 16913(b), 16917(a)(3).

²²ICE-ERO stated that from its perspective, when an alien offender is taken into ICE custody following the offender's release from a BOP facility, this is not a transfer. Rather, the offender's criminal sentence is considered to be complete when BOP releases the offender, and ICE is exercising its independent authority to take the alien offender into custody thereafter.

²³18 U.S.C. § 4042(c)(1)-(2).

are taken into ICE-ERO custody upon their release from a BOP facility, in part because BOP does not know where ICE-ERO will detain the offender. BOP officials stated that ICE-ERO would be in the best position to notify jurisdiction officials that the agency has a sex offender in its custody because ICE-ERO would know where the offender is being detained and ultimately where the offender will be released. Figure 1 illustrates the gaps in notifications provided to and about alien sex offenders who are removed from the country or released under ICE-ERO supervision.

Figure 1: Gaps in Notifications Provided to and about Alien Sex Offenders Who Are Removed or Released under U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations (ICE-ERO) Supervision



Source: GAO; Art Explosion (images).

ICE-ERO Informs
Removed Alien Sex
Offenders about Potential
Registration Requirements,
but Does Not Consistently
Inform Alien Sex
Offenders under
Supervision about Such
Requirements

ICE-ERO has a mechanism in place to inform alien sex offenders who are being removed from the country about potential registration requirements. In response to concerns raised by the U.S. Marshals Service that alien sex offenders who were being removed from the country were not aware of registration requirements, ICE-ERO, in consultation with DOJ, established a mechanism to inform all removed offenders about these requirements. Persons who are being removed from the United States are required to sign one of two forms—Warning to Alien Ordered Removed or Departed (Form I-294) or Notice to Alien Ordered Removed/Departure Verification (Form I-296)—which are used to provide information to aliens such as the length of time they are prohibited from reentering the United States, among other things. In early 2012, ICE-ERO added a notice to these two forms that explained that alien sex offenders must register if they ever return to the United States, and failure to do so could result in prosecution.²⁴ Officials from the U.S. Marshals Service—which is responsible for investigating cases in which sex offenders fail to register—stated that having this notification mechanism in place will improve their ability to provide evidence to support the prosecution of offenders who fail to register because it is important for the prosecutor to demonstrate that the offender was aware of the registration requirements.

However, ICE-ERO does not have a mechanism to ensure that all sex offenders under order of supervision are informed about potential registration requirements. According to ICE-ERO, given the uncertainty surrounding its legal role in informing alien sex offenders in its custody about potential registration requirements, ICE-ERO has not yet established a nationwide mechanism for informing all sex offenders on order of supervision about their potential registration requirements.²⁵ ICE-ERO field offices can choose to establish their own procedures for informing these offenders. Specifically, ICE-ERO field offices have the option of using an addendum to a particular form that ICE-ERO provides

²⁴The specific language added to the forms is as follows: “Federal Law requires a convicted sex offender, including an alien who has been removed from or otherwise departed the United States and subsequently returns, to register in each jurisdiction in the United States in which he or she resides, is employed, or is a student. Violation of this requirement can result in prosecution and imprisonment for up to 10 years under Title 18 United States Code, Section 2250.”

²⁵ Information about additional steps that ICE has taken, or could take, to determine what, if any, responsibility ICE-ERO has with regard to informing alien sex offenders of their registration requirements was omitted because ICE considered it to be FOUO.

to alien sex offenders under order of supervision to inform these offenders about potential registration requirements. Before releasing an alien under order of supervision, ICE-ERO requires aliens to review and sign Department of Homeland Security (DHS) Form I-220B, Order of Supervision, which explains the alien's conditions of release. The form also allows for additional conditions to be identified in an addendum. The addendum includes the following condition for aliens convicted of a sex offense: "That you register as a sex offender, if applicable, within 7 days of being released, with the appropriate agency(s) and provide ICE with written proof of such within 10 days." Officials from two of the five ICE-ERO field offices included in our review told us they have an office policy in place that requires deportation officers to inform alien sex offenders under supervision about potential registration requirements. Both offices use the addendum to the Form I-220B to inform these offenders.

However, as part of a broader effort that began in 2009 to review and revise ICE's policy on reporting requirements under orders of release on recognizance and orders of supervision, ICE-ERO officials indicated that they must take additional steps before finalizing pending revisions.²⁶ For example, revisions to the Form I-220B must be put through the agency's formal clearance process before a revised version can be published. Also, given the uncertainty surrounding its legal role in informing alien sex offenders in its custody about potential registration requirements, the agency needs to assess whether there is a legal obligation for ICE-ERO to notify alien sex offenders of their requirements to register.²⁷ According to ICE officials, if ICE-ERO determines that there is no such obligation, it will then decide whether or not to retain, as a matter of policy, the language in the Form I-220B addendum regarding sex offender registration.

²⁶An order of release on recognizance outlines the specific requirements an alien being released from ICE custody must meet as a condition of the alien's release, such as the need for the alien to obtain written permission from an ICE official before changing residence. An order of release on recognizance is used to release certain aliens from detention while proceedings to determine whether they are removable are still pending; an order of supervision is used for aliens released from ICE custody who are already subject to a final order of removal. See 8 C.F.R. pt. 236, subpt. A; pt. 241, subpt. A.

²⁷ Information about additional steps that ICE has taken, or could take, to determine what, if any, responsibility ICE-ERO has with regard to informing alien sex offenders of their registration requirements was omitted because ICE considered it to be FOUO.

SORNA states that, shortly before the release of the sex offender from custody for the offense giving rise to the duty to register, an appropriate official must inform the sex offender of that person's duties under SORNA, which would include registration, and explain those duties.²⁸ According to SMART officials, other law enforcement agencies, including state correctional and probation agencies, have information and notification processes, even though the agencies are sometimes not explicitly required to do so by law. SMART officials said that these agencies have taken these actions in part because of an overall responsibility to assist other law enforcement when possible.

ICE-ERO's efforts are positive steps that should help address the uncertainty as to whether SORNA requirements to notify sex offenders of their duty to register apply to ICE-ERO. However, ICE-ERO began its review 4 years ago and has not identified a deadline for when it will finalize its decision on use of the Form I-220B addendum for providing sex offender registration notifications. Standard practices for project management state that managing a project, such as ICE-ERO's review, involves developing a timeline with milestone dates.²⁹ A deadline would help ensure timely completion of ICE-ERO's review of the Form I-220B addendum, which is important because until the review is complete, there will continue to be uncertainty as to whether and how ICE-ERO should be notifying alien sex offenders who are released under order of supervision of their duty to register.

²⁸42 U.S.C. § 16917.

²⁹ Project Management Institute's *The Standard for Program Management*®.

ICE-ERO Does Not Notify
Relevant Sex Offender
Registry and Law
Enforcement Officials
When an Alien Sex
Offender Is Removed or
Released under
Supervision

ICE-ERO also does not notify sex offender registry and law enforcement officials when an alien sex offender is removed from the country or released under supervision, in part because ICE-ERO officials stated that the extent to which ICE-ERO has the authority or responsibility to do so is questionable.³⁰ These officials also stated that contacting local jurisdictions would require significant field office resources and modifications to deportation officer duties.

Sex offender registry and local law enforcement officials that we contacted in the three states in our review said that the officials are not always aware of when ICE-ERO removes alien sex offenders or releases them under ICE-ERO supervision.³¹ As a result, the officials are not able to ensure that these offenders are registered or that their registration information is current. Sex offender registry and law enforcement officials from two states said that, for alien sex offenders who they know are in ICE custody, the officials typically contact ICE on their own initiative to ask about the status of these offenders. Sex offender registry officials in another state said that even though they have an ICE agent colocated with them, the agent does not consistently inform them when ICE deports or releases an alien sex offender, in part because the agent has other responsibilities and notifying the state registry of the status of alien sex offenders in ICE custody is a collateral duty. These registry officials said that they typically become aware of an alien sex offender who has been released from ICE custody if (1) the offender registers with local law enforcement officials on the offender's own initiative, (2) the offender's probation officer notifies them, or (3) they check on the status of the offender—as they routinely do—and determine that the offender has absconded.

In addition, local law enforcement and state registry officials from two of three states we reviewed and officials from a U.S. Marshals Service field

³⁰ Information about additional steps that ICE has taken, or could take, to determine what, if any, responsibility ICE-ERO has with regard to informing alien sex offenders of their registration requirements was omitted because ICE considered it to be FOUO.

³¹ These three states are Minnesota, Florida, and Maryland. We chose Minnesota and Florida because they are among the states where the largest number of alien sex offenders in our sample who were not in the public website reside. We chose Maryland because local law enforcement officials had raised concerns about not being notified of alien sex offenders who are removed from the country or released under order of ICE-ERO supervision.

office stated that they know of instances—although they were not able to provide the specific number—when they expended resources searching for an alien sex offender who they thought had absconded only to find that ICE-ERO had the offender in custody, removed the offender, or released the offender. Officials from another local law enforcement agency said that ICE should notify the state registry of the alien sex offenders in ICE custody so that state and local law enforcement officials are aware of the location of the alien sex offenders and do not expend resources looking for them. State registry and local law enforcement officials in our review also provided examples of how their lack of awareness about removed alien sex offenders, in particular, could pose a risk to public safety. For example, registry officials in one state said that there have been instances when they were not aware that an alien sex offender had been removed from the country until the sex offender subsequently returned to the United States, committed another offense, and ended up back in the state criminal justice system. Local law enforcement officials from another state described an instance in which they were not aware that an alien sex offender had been removed from the country until the offender returned to the United States and was subsequently arrested for committing another sex offense against the same child that he had previously victimized. According to the data that ICE-ERO provided to us, of the 4,359 alien sex offenders who were removed from the country between January and August 2012, 220 of them (5 percent) had previously been removed but subsequently returned to the United States and were arrested for another offense. As we reported in February 2013, the FBI is in the process of developing a mechanism by which the U.S. Marshals Service and relevant jurisdiction officials will be notified when a sex offender who has been registered in the United States legally reenters the country.³²

Federal law states that BOP and federal probation officers are to notify the jurisdiction in which the sex offender will reside that the offender has been released.³³ The law does not specify that ICE is required to do so; however, the state registry and local law enforcement officials in the three states included in our review said that, from their perspective, the best

³²See [GAO-13-200](#) for a description of the process by which state registry and local law enforcement officials will be notified when a sex offender who has been registered in the United States enters the country.

³³18 U.S.C. § 4042(c).

way to ensure that they are aware of alien sex offenders whom ICE-ERO has in custody, removed from the country, or released under supervision is for ICE-ERO to tell the officials.

ICE-ERO Plans to Review Notification Options for Offenders under Supervision, but Has Not Set a Deadline for Doing So, and Does Not Plan to Consider Options for Removed Offenders

ICE-ERO plans to review options to help address notification gaps pertaining to alien sex offenders who are released under order of supervision, but has not established a deadline for when it will complete this review. ICE-ERO, however, does not plan to consider options for notifying jurisdictions when an alien sex offender is removed from the country, which, as discussed previously, could have an impact on a jurisdiction's ability to monitor these individuals if they return to the United States.

As a result of our review, in May 2013, officials from ICE-ERO, the U.S. Marshals Service, and the SMART Office met to discuss notification gaps with regard to registration of alien sex offenders and options for addressing these gaps. However, the agencies were not able to agree to a solution at that time, in part because of ICE-ERO officials' concerns about their organization's lack of authority and responsibility regarding sex offender registration. Officials we interviewed from the U.S. Marshals Service and the SMART Office stated that ICE-ERO was in the best position to inform alien sex offenders about potential registration requirements, and to notify relevant jurisdiction officials—either state registry or law enforcement officials—when an alien sex offender is removed from the country or released, because ICE-ERO is the last federal agency that has had contact with these offenders and releases these offenders from custody into the community.

However, in addition to uncertainty regarding ICE-ERO's authority and responsibility, ICE-ERO officials identified other concerns about providing these notifications. Specifically, officials we interviewed in the five ICE-ERO field offices included in our review said that because they are responsible for supervising such a large number of aliens—anywhere from 750 to 3,000 at any point in time—they would not have the time or resources to notify jurisdiction officials when an alien sex offender is released or removed from the country. However, as noted previously, alien sex offenders make up a relatively small fraction (5 percent) of aliens under ICE supervision, in which case providing these notifications may not pose a significant resource burden on ICE-ERO. Further, ICE-ERO officials as well as one of the five ICE-ERO field offices in our review said that they thought that, to notify jurisdiction officials, they would first have to confirm that the alien does in fact have to register in that state,

which could be very time-consuming. However, under SORNA, the state is responsible for determining whether a convicted sex offender is required to register, in which case ICE-ERO would not have to do so prior to providing notice of the offender's release.

ICE-ERO officials also stated that SORNA also requires individuals convicted of certain crimes against children that are not sex offenses—such as kidnapping—to register as sex offenders. However, these officials explained that it would be difficult for deportation officers to determine whether aliens under their supervision were convicted of a crime that is not a sex offense but may require registration. We acknowledge that this could be a challenge and an issue that the SMART Office may be able to help ICE-ERO resolve. Moreover, officials from all five ICE-ERO field offices in our review said that even if they informed alien sex offenders of their registration requirements, the officials would not be able to take any action to enforce these requirements even when registering as a sex offender is a condition of release for aliens under ICE-ERO supervision. However, ICE-ERO could notify all offenders who are released on supervision, as it does for offenders who are removed from the country, and then state and local law enforcement would be responsible for enforcing registration requirements. Also, if ICE-ERO notifies jurisdiction officials of the offender's release, these officials would be able to identify those offenders who did not register after their release; ICE-ERO would not have to assume this responsibility. Finally, officials from two ICE-ERO field offices in our review said that they would not know who, specifically, to contact at the state registry to notify it that ICE-ERO is deporting or releasing an alien sex offender. However, the SMART Office maintains points of contact for each state, territory, and tribal sex offender registration agency, which the SMART Office could provide to ICE-ERO.

In July 2013, an ICE-ERO official stated that ICE-ERO will begin reviewing options to accomplish the goal of sex offender notification, to include efforts to inform alien sex offenders of their potential registration requirements and to notify jurisdictions of alien sex offenders who are released under order of supervision. However, ICE-ERO did not provide a deadline for when it plans to complete its review of the various options. Standard practices for project management state that managing a project, such as ICE-ERO's review, involves developing a timeline with milestone

dates.³⁴ Further, Standards for Internal Control in the Federal Government call for agencies to ensure that there are adequate means of communicating with, and obtaining information from, external stakeholders that may have a significant impact on the agency achieving its goals.³⁵ By developing a deadline for when it will complete its assessment of options for providing notifications to and about alien sex offenders, ICE-ERO will help to ensure that any public safety concerns that may arise as a result of the current notification gaps—such as law enforcement officials being unaware of sex offenders living in their jurisdictions—are mitigated in a timely manner. Finally, communicating the results of its assessment with federal stakeholders will help provide clarity going forward with regard to who has responsibility for notifying alien sex offenders of their potential registration requirements.

Although ICE-ERO plans to address notification gaps regarding alien sex offenders under order of supervision, it does not plan to consider options for notifying relevant jurisdictions when an alien sex offender is removed from the country. ICE-ERO stated that it already updates NCIC—which is routinely accessed by law enforcement officials—when an alien sex offender is removed, including the date of the removal. However, if law enforcement officials were last told that the alien sex offender was in ICE-ERO custody, they may not have a reason to search NCIC to determine the status of the offenders. Given the threat that alien sex offenders who are removed from and return to the United States may pose to public safety, developing an appropriate mechanism for informing relevant jurisdictions when an alien sex offender has been removed from the country will assist jurisdiction officials in ensuring that all alien sex offenders have been registered. This will facilitate the monitoring of these sex offenders in the event that they return to the United States. Such notification would also prevent jurisdictions from spending limited resources trying to locate these offenders because they were not aware that the offenders had been removed from the country. Other federal agencies, including the SMART Office, U.S. Marshals Service, and BOP, may have resources and information that are useful for ICE-ERO in developing a mechanism for notifying relevant jurisdictions when an alien sex offender is removed from the country. For example, SMART

³⁴ Project Management Institute's *The Standard for Program Management*© .

³⁵ *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C: Nov. 1, 1999)

maintains contact information for all state, territorial, and tribal registry agencies. Also, internal control standards call for agencies to ensure that there are adequate means of communicating with, and obtaining information from, external stakeholders that may have a significant impact on the agency's achieving its goals.³⁶ Therefore, consulting with these agencies could be beneficial for ICE-ERO in developing this notification mechanism.

Conclusions

Without mechanisms in place to consistently inform alien sex offenders who are released under ICE-ERO supervision about their registration requirements, and consistently notify jurisdictions when an alien sex offender has been removed from the country or released under supervision, the risk that alien sex offenders will reside in U.S. communities without being registered is increased. ICE-ERO is in the process of a review to determine whether continued use of the Form I-220B addendum as a means to notify alien sex offenders of their potential registration requirements is warranted; however, ICE-ERO has not set a deadline for timely completion of this review. A deadline will help enhance accountability for completion of this effort, which is important because until this review is completed, there will continue to be uncertainty as to whether and how ICE-ERO should be notifying alien sex offenders who are released under order of supervision of their duty to register. In addition, a time frame for when ICE-ERO will complete its assessment of options for notifying alien sex offenders of their potential registration requirements will help provide accountability for completing this important effort. Also, communicating the results of ICE-ERO's assessment with federal stakeholders will help provide clarity going forward with regard to who has responsibility for notifying alien sex offenders of their potential registration requirements. Moreover, given the threat that alien sex offenders who are removed from and return to the United States may pose to public safety, developing an appropriate mechanism for informing relevant jurisdictions when an alien sex offender has been removed will assist jurisdiction officials in ensuring that all alien sex offenders are registered. This will facilitate the monitoring of these sex offenders in the event that they return to the United States. Such notification would also prevent jurisdictions from spending limited resources trying to locate

³⁶[GAO/AIMD-00-21.3.1.](#)

these offenders because they were not aware that the offenders had been removed from the country.

Recommendations for Executive Action

We recommend that the Director of ICE take the following two actions:

- direct ICE-ERO to establish a deadline to ensure timely completion of its review of the Form I-220B addendum and
- direct ICE-ERO to establish a deadline for when it will complete its assessment of options for informing alien sex offenders who are released under order of supervision about their potential responsibility to register and communicate the results of its assessment with federal stakeholders.

We recommend that the Secretary of Homeland Security direct ICE-ERO, in consultation with the SMART Office, the U.S. Marshals Service, and BOP, to develop an appropriate mechanism for notifying relevant jurisdictions when an alien sex offender has been removed from the country.

Agency Comments and Our Evaluation

We provided a draft of this report for review and comment to DHS and DOJ. We received written comments from DHS, which are reproduced in full in appendix III. DHS agreed with our recommendations in its comments. We also received technical comments from DHS and DOJ, which are incorporated throughout our report as appropriate.

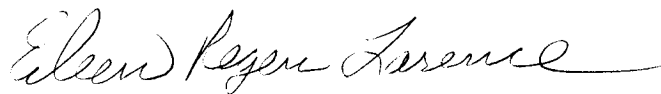
DHS agreed with our recommendations that ICE-ERO establish deadlines for when it will complete its review of the Form I-220B addendum and its assessment of options for informing alien sex offenders who are released under order of supervision about their potential registration responsibilities. DHS noted that ICE-ERO had taken steps to combine Form I-220A (Order of Release on Recognizance) and Form I-220B (Order of Supervision) into one comprehensive Form I-220 (Order of Release on Recognizance or Order of Supervision). However, ICE-ERO intentionally delayed publication of this new form, and the associated directive, to take into account any recommendations resulting from our review. DHS also stated that ICE-ERO is currently working with the SMART Office to explore ways in which the goals of SORNA may be better addressed through improved coordination between the two agencies. ICE-ERO plans to complete its review and assessment by October 31, 2013. Establishing such a deadline for the completion of these efforts will help ensure that ICE-ERO can be held accountable for

identifying and effectuating any actions they deem appropriate to help ensure that alien sex offenders are indeed registered. As part of our process for following up on agencies' efforts to implement our recommendations, we will continue to monitor ICE-ERO's progress in completing its assessment and review by the established deadline.

DHS also concurred with our recommendation that ICE-ERO, in consultation with the SMART Office, the U.S. Marshals Service, and BOP, develop an appropriate mechanism for notifying relevant jurisdictions when an alien sex offender has been removed from the country. DHS noted, however, that as ICE-ERO considers options, it will also determine whether such notification can be accomplished without adversely affecting ICE's mission, given the potential impact on resources. ICE-ERO also plans to complete its assessment of these options by October 31, 2013. Notifying jurisdictions when an alien sex offender is removed from the country will enable them to register these offenders, in which case law enforcement officials will be able to monitor these offenders if they ever return to the United States.

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

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



Eileen R. Larence
Director, Homeland Security and Justice

List of Requesters

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate

The Honorable Christopher H. Smith
Chairman
Subcommittee on Africa, Global Human Rights, and International
Organizations
Committee on Foreign Affairs
House of Representatives

The Honorable F. James Sensenbrenner, Jr.
Chairman
The Honorable Robert C. "Bobby" Scott
Ranking Member
Subcommittee on Crime, Terrorism, Homeland Security, and
Investigations
Committee on the Judiciary
House of Representatives

Appendix I: Objectives, Scope, and Methodology

This report addresses the following objectives:

(1) To what extent are alien sex offenders under the Enforcement and Removal Operations division of U.S. Immigration and Customs Enforcement (ICE-ERO) order of supervision registered as sex offenders?

(2) To what extent are alien sex offenders who are removed from the country or released under an ICE-ERO order of supervision informed of registration requirements, and state sex offender registry and law enforcement officials notified about these offenders?

To address our objectives, we requested that ICE-ERO provide the names and dates of birth for all alien sex offenders who were under orders of supervision as of September 2012. We chose this date because we requested this information as part of a separate review and this date provided us with current information at the time.¹ ICE-ERO provided us with the names for 2,837 alien sex offenders under orders of supervision as of September 2012. However, ICE-ERO was able to provide us only with a complete date of birth—which is important for verifying the identity of these individuals—for 1,369 of these alien offenders.² We drew a random probability sample of 137 of the 1,369 alien sex offenders with complete dates of birth. We subsequently found that six individuals in our sample should not have been included in the population of alien sex offenders under supervision, resulting in a final sample size of 131 and an estimated total population of 1,309.³ We determined whether each alien sex offender, as of March 2013, was registered in the state where he or she resides using the steps described below. Percentage estimates derived from this sample have margins of error at the 95 percent

¹GAO, *Sharing More Information Will Enable Federal Agencies to Improve Notifications of Sex Offenders' International Travel*, [GAO-13-200](#) (Washington, D.C.: Feb. 14, 2013).

²ICE-ERO officials explained that the date of birth is not available for all aliens under ICE-ERO supervision because date of birth is not a required field in ICE's case management system.

³Because we found individuals in our sample who should have been excluded from the population, we used the number of these individuals to statistically estimate the true size of the population of relevant individuals.

confidence level of plus or minus 8.08 percentage points.⁴ We assessed the reliability of the data ICE provided by questioning knowledgeable agency officials and reviewing the data for errors and anomalies. We determined that the data were sufficiently reliable for our purposes.

To determine whether the 131 alien sex offenders in our sample were registered in the states where they reside, we first searched the National Sex Offender Public Website (public website) to determine which of these offenders were included. All persons included on the public website are also registered with their respective states. On the basis of the search results, we divided the alien sex offenders into three categories: (1) definitely included in the public website, meaning there was an exact match on the name and date of birth for the alien sex offender in the public website; (2) possibly included in the public website, meaning there was a partial or similar name, date of birth, or age in the public website (e.g., J. Smith as opposed to John Smith), but not an exact match; and (3) definitely not included in the public website, meaning the public website did not include the offender's exact name or date of birth or even a partial or similar name, date of birth, or age. We determined that of the 131 alien sex offenders in our sample, 51 (39 percent) were definitely included in the public website, 16 (12 percent) were possibly included, and 64 (49 percent) were definitely not included. We asked ICE-ERO to provide us with the current addresses for the 80 alien sex offenders who were possibly included or definitely not included in the public website; these offenders were located in 27 states. We contacted sex offender registration officials in each of the 27 states to ask whether the officials were aware of these offenders; whether the offenders were registered with the state; and, for any offenders who were not registered, an explanation for why they were not.

To address our second objective, we reviewed the Sex Offender Registration and Notification Act of 2006 (SORNA), other applicable laws, and guidelines developed by the Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) Office to obtain

⁴Because we followed a probability procedure based on random selection, our sample is only one of a large number of samples that we might have drawn. Since each sample could have provided different estimates, we express our confidence in the precision of our particular sample's results as a 95 percent confidence interval (e.g., plus or minus 8.08 percentage points). This is the interval that would contain the actual population value for 95 percent of the samples we could have drawn.

information on federal sex offender registration requirements. We also met with officials from ICE-ERO Executive Information and Reporting Unit—which is responsible for administering and coordinating ICE-ERO’s policy development, review, clearance, and information disclosure functions—to obtain information on how they determine whether an alien in ICE-ERO custody is a sex offender and any actions they take to help ensure that alien sex offenders who are released under ICE-ERO supervision are registered. In addition, we conducted phone interviews with ICE-ERO supervisory detention officials; U.S. Marshals Service officials; state sex offender registry officials; and local law enforcement officials in Minnesota, Florida, and Maryland to inquire about actions they take to help ensure alien sex offenders are registered and how they become aware of alien sex offenders who live in their jurisdiction. We selected Minnesota and Florida because these are the states where the largest number of alien sex offenders in our sample who were not included in the public website reside. We selected Maryland because local law enforcement officials in this state had raised concerns about registration of alien sex offenders during our prior work, which was completed in February 2013.⁵ In addition, we conducted phone interviews with ICE-ERO field office directors and deputy directors in the field offices that either released or currently supervise the alien sex offenders in our sample who were not registered, but potentially should have been. We obtained information from the Administrative Office of the United States Courts and the Federal Bureau of Prisons (BOP) regarding their efforts to inform alien sex offenders about their registration responsibilities and notifying relevant sex offender registry and law enforcement officials about these offenders. In addition, we interviewed officials from the U.S. Marshals Service who are responsible for locating sex offenders who fail to register. We also met with the director and policy advisors for the SMART Office within the Department of Justice (DOJ) to obtain their perspectives on acceptable reasons for why alien sex offenders may not be registered in the state where they reside or included in the public website. The SMART Office is responsible for assessing states’, territories’, and tribes’ progress in implementing SORNA. We compared the sex offender notification requirements in SORNA and other federal statutes with the notifications that state and federal agencies provide to alien sex offenders to determine if there were any gaps. We then

⁵GAO, *Sex Offender Registration and Notification Act: Jurisdictions Face Challenges to Implementing the Act, and Stakeholders Report Positive and Negative Effects*, [GAO-13-211](#) (Washington, D.C.: Feb. 7, 2013).

obtained perspectives from the federal, state, and local officials we interviewed on how best to address these gaps. We also compared efforts that ICE-ERO has under way regarding notifications to and about alien sex offenders with internal control standards pertaining to communication with stakeholders and program management standards that involve establishing milestone dates and deadlines.⁶

We conducted this performance audit from January 2013 to September 2013 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence 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.

⁶GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: November 1999), and the Project Management Institute's *The Standard for Program Management* (Newton Square, PA © 2006).

Appendix II: Sex Offender Notification Requirements in the Sex Offender Registration and Notification Act (SORNA) and Other Federal Statutes

Type of notification	Notification requirement
Informing sex offender of registration requirements	<p><u>42 USC § 16917—Duty to notify sex offenders of registration requirements and to register</u></p> <p>(a) In General. An appropriate official shall, shortly before release of the sex offender from custody, or, if the sex offender is not in custody, immediately after the sentencing of the sex offender, for the offense giving rise to the duty to register—</p> <ol style="list-style-type: none"> (1) inform the sex offender of the duties of a sex offender under this title and explain those duties; (2) require the sex offender to read and sign a form stating that the duty to register has been explained and that the offender understands the registration requirement; and (3) ensure that the sex offender is registered. <p>(b) Notification of Sex Offenders Who Cannot Comply with Subsection (a). The Attorney General shall prescribe rules for the notification of sex offenders who cannot be registered in accordance with subsection (a).</p>
Notifying state registry and local law enforcement officials about the release of a sex offender	<p><u>18 USC § 4042(c)(1)-(3)—Duties of Bureau of Prisons</u></p> <p>(c) Notice of Sex Offender Release—</p> <p>(1) In the case of a person described in paragraph (3), or any other person in a category specified by the Attorney General, who is released from prison or sentenced to probation, notice shall be provided to—</p> <ol style="list-style-type: none"> (A) the chief law enforcement officer of each State, tribal, and local jurisdiction in which the person will reside; and (B) a State, tribal, or local agency responsible for the receipt or maintenance of sex offender registration information in the State, tribal, or local jurisdiction in which the person will reside. <p>(2) Notice provided under paragraph (1) shall include the information described in subsection (b)(2), the place where the person will reside, and the information that the person shall register as required by the Sex Offender Registration and Notification Act. For a person who is released from the custody of the Bureau of Prisons whose expected place of residence following release is known to the Bureau of Prisons, notice shall be provided at least 5 days prior to release by the Director of the Bureau of Prisons. For a person who is sentenced to probation, notice shall be provided promptly by the probation officer responsible for the supervision of the person, or in a manner specified by the Director of the Administrative Office of the United States Courts. Notice concerning a subsequent change of residence by a person described in paragraph (3) during any period of probation, supervised release, or parole shall also be provided to the agencies and officers specified in paragraph (1) by the probation officer responsible for the supervision of the person, or in a manner specified by the Director of the Administrative Office of the United States Courts.</p> <p>(3) The Director of the Bureau of Prisons shall inform a person who is released from prison and required to register under the Sex Offender Registration and Notification Act of the requirements of that Act as they apply to that person and the same information shall be provided to a person sentenced to probation by the probation officer responsible for supervision of that person.</p>

Source: Sex offender Registration and Notification Act of 2006 (SORNA), 42 USC § 16917, and 18 USC § 4042(c)(1)-(3)

Appendix III: Comments from the Department of Homeland Security

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



**Homeland
Security**

September 5, 2013

Eileen R. Larence
Director, Homeland Security and Justice Issues
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Re: Draft Report GAO-13-832, "SEX OFFENDERS: ICE Could Better Inform Offenders It Supervises of Registration Responsibilities and Notify Jurisdictions When Offenders Are Deported"

Dear Ms. Larence:

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

DHS appreciates GAO's recognition that U.S. Immigration and Customs Enforcement Enforcement and Removal Operations (ICE-ERO) personnel are actively addressing the issues discussed in this report. ICE-ERO prioritizes the apprehension, arrest, and removal of convicted criminals, those who pose a threat to national security, fugitives, recent border entrants, and aliens who thwart immigration controls. DHS is dedicated to enhancing public safety and improving operational transparency regarding alien sex offenders subject to removal and those subject to orders of supervision.

The draft report contained three recommendations with which the Department concurs. Specifically, GAO recommended that:

Recommendation 1: The Director of ICE direct ICE-ERO to establish a deadline to ensure timely completion of the working group's review of the Form I-220B addendum.

Response: Concur. ICE-ERO has taken positive steps toward creating a comprehensive reporting directive in tandem with a new form, Form I-220 (Order of Release on Recognizance or Order of Supervision), to supersede and combine the current iterations of Form I-220A (Order of Release on Recognizance) and Form I-220B (Order of Supervision). The draft directive and the revised form were in the review process when GAO began its audit. Publication of the directive and supporting form was intentionally delayed to take into account any recommendations resulting from the audit. ICE-ERO anticipates completing its review of the directive this fall. Estimated Completion Date (ECD): October 31, 2013.

Recommendation 2: The Director of ICE direct ICE-ERO to establish a deadline for when it will complete its assessment of options for informing alien sex offenders who are released under order of supervision about their potential responsibility to register and communicate the results of its assessment with federal stakeholders.

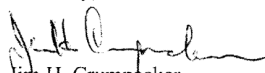
Response: Concur. ICE-ERO representatives are currently working with members of the U.S. Department of Justice's Sex Offender Monitoring, Apprehending, Registering, and Tracking (SMART) Office to explore ways in which the goals of SORNA may be better addressed through strengthened coordination between ICE-ERO and the SMART Office.
ECD: October 31, 2013.

Recommendation 3: The Secretary of Homeland Security direct ICE-ERO, in consultation with the SMART Office, the U.S. Marshals Service, and BOP, to develop an appropriate mechanism for notifying relevant jurisdictions when an alien sex offender has been deported.

Response: Concur. ICE-ERO will consider options for notifying relevant jurisdictions when an alien sex offender is removed from the United States. This process will include (1) consultation with others, and (2) determining whether such notification can be reasonably accomplished without adversely impacting ICE's mission, in light of potential operational impacts and existing resource burdens, as appropriate. ECD: October 31, 2013.

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

Sincerely,



John H. Crumacker
Director
Departmental GAO-OIG Liaison Office

Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

Eileen R. Larence, 202-512-8777 or larencee@gao.gov

Staff Acknowledgments

In addition to the contact named above, Kristy Love, Assistant Director, and Edith Sohna, analyst-in-charge, managed this engagement. Kevin Craw and Frances Cook made significant contributions to the report. Michele Fejfar, Justin Fisher, Mary Catherine Hult, Michael Lenington, Linda Miller, Lara Miklozek, and Julie Spetz also provided valuable assistance.

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