



U.S. DEPARTMENT OF HOMELAND SECURITY **OFFICE OF INSPECTOR GENERAL**

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May 6, 2024

FINAL REPORT

DHS Has a Fragmented Process for Identifying and Resolving Derogatory Information for Operation Allies Welcome Parolees





OFFICE OF INSPECTOR GENERAL

U.S. Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

May 6, 2024

MEMORANDUM FOR: See Distribution List

FROM: Joseph V. Cuffari, Ph.D.
Inspector General

SUBJECT: *DHS Has a Fragmented Process for Identifying and Resolving Derogatory Information for Operation Allies Welcome Parolees*

**JOSEPH V
CUFFARI**

Digitally signed by
JOSEPH V CUFFARI
Date: 2024.05.06
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Attached for your action is our final report, *DHS Has a Fragmented Process for Identifying and Resolving Derogatory Information for Operation Allies Welcome Parolees*. We incorporated the formal comments provided by your office.

The report contains five recommendations aimed at addressing vulnerabilities in the derogatory information and resolution processes for Operation Allies Welcome parolees. Your office concurred with all five recommendations. Based on information provided in your response to the draft report, we consider all five recommendations open and resolved. Once your office has fully implemented the recommendations, please submit a formal closeout letter to us within 30 days so that we may close the recommendations. The memorandum should be accompanied by evidence of completion of agreed-upon corrective actions and of the disposition of any monetary amounts.

Please send your response or closure request to OIGInspectionsFollowup@oig.dhs.gov.

Consistent with our responsibility under the *Inspector General Act*, we will provide copies of our report to congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination.

Please contact me with any questions, or your staff may contact Thomas Kait, Deputy Inspector General, Office of Inspections and Evaluations, at (202) 981-6000.

Attachment

Distribution List

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DHS OIG HIGHLIGHTS

DHS Has a Fragmented Process for Identifying and Resolving Derogatory Information for Operation Allies Welcome Parolees

May 6, 2024

Why We Did This Evaluation

We conducted this evaluation to assess DHS' identification and resolution of potentially derogatory records for OAW Afghan parolees.

What We Recommend

We made five recommendations to address vulnerabilities in the derogatory information and resolution processes.

For Further Information:

Contact our Office of Public Affairs at (202) 981-6000, or email us at:

DHS-OIG.OfficePublicAffairs@oig.dhs.gov.

What We Found

Three Department of Homeland Security components—U.S. Customs and Border Protection (CBP), U.S. Citizenship and Immigration Services (USCIS), and U.S. Immigration and Customs Enforcement (ICE)—have separate but interconnected processes for identifying and resolving derogatory information for individuals evacuated from Afghanistan and paroled into the United States under Operation Allies Welcome (OAW).

We found vulnerabilities in the USCIS and ICE processes for resolving derogatory information. Specifically, we identified:

- a potential USCIS enforcement action gap for OAW parolees denied immigration benefits;
- USCIS' case referral criteria do not align with ICE's case acceptance criteria;
- changes to DHS immigration law enforcement priorities that may result in different enforcement action thresholds for certain cases; and
- a complex ICE process for removing OAW parolees to Afghanistan that depends on a third-party country.

In addition, we found DHS does not have a process for monitoring parole expiration and that the guidelines for determining re-parole for OAW parolees were undefined. We also found data errors in USCIS and ICE records for the OAW population.

Agency Response

DHS concurred with our five recommendations, which we consider resolved and open.



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Abbreviations

CBP	U.S. Customs and Border Protection
DDO	detention and deportation officer
EPS	egregious public safety
ERO	Enforcement and Removal Operations
FBI	Federal Bureau of Investigation
FDNS	Fraud Detection and National Security Directorate
HSI	Homeland Security Investigations
ICE	U.S. Immigration and Customs Enforcement
IJ	immigration judge
INA	Immigration and Nationality Act
LEA	law enforcement agency
MOA	memorandum of agreement
NTA	Notice to Appear
NVC	National Vetting Center



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OAR	Operation Allies Refuge
OAW	Operation Allies Welcome
PLCY	Office of Strategy, Policy, and Plans
POE	U.S. port of entry
UAE	United Arab Emirates
USCIS	U.S. Citizenship and Immigration Services
VSA	Vetting Support Agency



Background

The collapse of the Afghan central government and security forces in 2021 led to a U.S. military operation to evacuate vulnerable Afghans from Afghanistan under Operation Allies Refuge (OAR) and resettle them in the United States under Operation Allies Welcome (OAW). These Federal efforts brought approximately 97,000 evacuees¹ to the United States to resettle in American communities. Of these arrivals, approximately 77,000 (79 percent) were granted humanitarian parole² into the United States for 2 years.

The Immigration and Nationality Act (INA) authorizes the Department of Homeland Security Secretary to grant parole to any noncitizen applying for admission into the United States for urgent humanitarian reasons. Humanitarian parole grants eligible individuals temporary lawful presence in the United States but does not grant them immigration status or a path to lawful permanent residence. OAW parolees³ may apply for immigration benefits, resettlement assistance, and other benefits and services available to refugees, and their parole is conditional on medical screenings, vaccinations, and reporting address changes. Failure to fulfill these conditions could lead to denial of work authorization, parole termination, and ultimately removal from the United States.

During OAW, DHS' policy was to only issue parole to an evacuee after required screening, vetting, and inspection of each individual by intelligence, law enforcement, and counterterrorism professionals from DHS and other Federal entities.⁴ For each evacuee, DHS and Federal partners reviewed derogatory information, which includes any information that prompts a request for

¹ An evacuee was any individual, regardless of immigration status, who the U.S. Government evacuated from Afghanistan during OAR and OAW. Evacuees were individuals and their family members eligible for a special immigrant visa, journalists, human rights activists, humanitarian workers, and other Afghans whose careers put them at risk. Family members of American citizens and lawful permanent residents were also eligible. Evacuees entered the United States as parolees, U.S. citizens, lawful permanent residents, Afghans with U.S. visas or refugee status, or other third-country nationals.

² INA § 212(d)(5) gives the DHS Secretary discretionary authority to parole into the United States temporarily, under conditions the Secretary may prescribe, on a case-by-case basis for urgent humanitarian reasons or significant public benefit, any noncitizen applying for admission to the United States, regardless of whether the person is inadmissible to, or removable from, the United States. The DHS Secretary has delegated parole authority to U.S. Customs and Border Protection, U.S. Citizenship and Immigration Services, and U.S. Immigration and Customs Enforcement.

³ A parolee is an individual granted permission by the DHS Secretary to enter and remain temporarily in the United States for urgent humanitarian reasons or significant public benefit. A parolee is considered an applicant for admission.

⁴ DHS Office of Inspector General Audit Report, *DHS Encountered Obstacles to Screen, Vet, and Inspect All Evacuees during the Recent Afghanistan Crisis*, OIG-22-64, Sept. 2022, reviewed the extent to which DHS screened, vetted, and inspected evacuees arriving in the United States as part of OAR and OAW. The scope of this review is limited to evaluating DHS' identification and resolution of derogatory information after an individual's parole into the United States.



additional investigation or clarification and may ultimately lead to an unfavorable decision by a reviewing entity. This type of information may relate to national security concerns, criminal convictions, potential fraud, or other misconduct.

Within DHS, U.S. Customs and Border Protection (CBP) served as the lead component responsible for reviewing interagency screening and vetting results of OAW evacuees in overseas locations prior to their arrival in the United States. In addition, when OAW evacuees arrived at U.S. ports of entry (POEs), CBP conducted an inspection to verify their identity and admissibility, reviewed their derogatory information as necessary, and determined whether to grant humanitarian parole. Following parole, CBP initiated a classified recurrent vetting process where DHS and Federal partners conduct ongoing reviews of OAW parolees' derogatory information for the duration of their parole.⁵

OAW parolees' derogatory information is also reviewed by U.S. Citizenship and Immigration Services (USCIS) or U.S. Immigration and Customs Enforcement (ICE) when parolees apply for immigration benefits, are apprehended by law enforcement, or are referred for review from external Federal partners. Depending on the nature and severity of identified derogatory information, confirmation of such information may result in DHS actions including denial of immigration benefits, referral for criminal prosecution, or initiation of removal proceedings.⁶

Other DHS offices such as the Office of Biometric Identity Management may also participate in the derogatory information identification and resolution process by providing data, and the Office of Strategy, Policy, and Plans (PLCY) by developing relevant DHS policies for CBP, USCIS, and ICE, the three DHS components with operational responsibility for reviewing derogatory information. In addition, elements of DHS' process for identifying and resolving derogatory information for OAW parolees involve DHS coordination with other Federal partners and are classified.⁷ The sections below provide background on the classified vetting process and describe in further detail the roles of USCIS and ICE in the unclassified review of parolees' derogatory information.

Classified Vetting Process for the Identification of OAW Parolees' Derogatory Information

CBP played an initial role in identifying derogatory information for OAW evacuees prior to their arrival in the United States. After granting parole, CBP initiated a classified vetting process for

⁵ CBP's role in the recurrent vetting process was limited to initiating the process for OAW parolees. CBP does not have an ongoing role in the process.

⁶ During removal proceedings, an immigration judge will determine whether a noncitizen should be removed from the United States.

⁷ The scope of this evaluation is limited to the unclassified portions of DHS' process for identifying and resolving derogatory information for OAW parolees.



OAW parolees.⁸ To begin the process, the National Vetting Center (NVC)⁹ shared OAW parolees' biographical information with designated Vetting Support Agencies (VSAs)¹⁰ external to DHS. VSAs then compared the information collected on OAW parolees against classified information in their data holdings. Next, VSAs shared these results with DHS through the NVC. DHS components reviewed the information to verify parolee identities and locations or as part of the immigration benefit adjudication process.¹¹

OAW parolees are subject to the classified vetting process during the entire length of their parole. It is important to note that although CBP initiated this process for OAW parolees, either USCIS or ICE maintain the primary responsibility within DHS for handling derogatory information identified within this process. CBP does not take enforcement action¹² against OAW parolees as a result of identified derogatory information.

USCIS' Derogatory Information Identification and Resolution Process for OAW Parolees

OAW parolees were paroled into the United States and received temporary permission to be lawfully present for 2 years, and eligibility to apply for employment authorization. When an OAW parolee applies for immigration benefits such as employment authorization or long-term status, the role of identifying and resolving derogatory information for the parolee falls to USCIS. Long-term legal pathways that may be available for OAW parolees include asylum, Afghan special immigrant status, and family-based immigration, each subject to a different set of requirements. As of April 2023, members of the OAW population submitted approximately 145,000 applications to USCIS for various benefits, including long-term legal status. See Table 1 for the application types with the highest numbers of OAW applicants.

⁸ Significant portions of the recurrent vetting process are classified, including the information reviewed, names of OAW parolees with derogatory information, and Federal entities participating in the process.

⁹ The President directed the establishment of the NVC within DHS through National Security Presidential Memorandum-9. The purpose of the NVC is to coordinate agency vetting efforts to locate and use relevant intelligence and law enforcement information to identify individuals who may present a threat to the United States. The DHS Secretary delegated this responsibility within DHS to CBP.

¹⁰ VSAs are Federal agencies that provide intelligence, law enforcement, and other information to support immigration or border security programs.

¹¹ In the initial classified vetting process established for OAW parolees after their arrival in the United States, the NVC shared VSA information with ICE Homeland Security Investigations (HSI) for verification of parolee identities and locations. As part of an updated process, the NVC shares this information with USCIS as part of the immigration benefit adjudication process.

¹² An enforcement action is a DHS action to prevent unlawful entry into the United States or to apprehend and remove noncitizens who may have violated or failed to comply with U.S. immigration laws.



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Table 1. USCIS Applications from OAW Population¹³

Form Number	Form Title	Number of Applications
I-765	Application for Employment Authorization	93,417
I-485	Application to Register Permanent Residence or Adjust Status	18,952
I-589	Application for Asylum and for Withholding of Removal	16,606
I-821	Application for Temporary Protected Status	9,312
I-360	Petition for Amerasian, Widow(er), or Special Immigrant	2,798
I-131	Application for Travel Document ¹⁴	1,993
I-130	Petition for Alien Relative	766
I-730	Refugee/Asylee Relative Petition	694
I-90	Application to Replace Permanent Resident (Green) Card	115

Source: Data from USCIS information systems as of April 2023 and USCIS application type information

During the application process, USCIS adjudication directorates¹⁵ conduct biographic and biometric security checks in DHS information systems to identify potentially derogatory information that may inform decisions of whether to approve or deny applications. When USCIS identifies derogatory information, adjudication directorates may refer cases to the USCIS Fraud Detection and National Security Directorate (FDNS), including through local FDNS staff, for further administrative investigation. These investigations may involve research in classified databases and systems.¹⁶ Based on the results of its investigation, USCIS FDNS either returns the case to adjudications for a decision or to ICE for further criminal investigation and/or potential enforcement action before releasing the case to the adjudicators. Figure 1 on the following page shows the USCIS process for identifying and resolving derogatory information for the OAW population.

¹³ Table 1 data includes applications from the entire OAW population of 97,000 evacuees and is not limited to the 77,000 OAW parolees. OAW parolees can concurrently apply for more than one type of benefit with USCIS.

¹⁴ Form I-131 is the form to apply for advance parole.

¹⁵ The USCIS adjudication directorates involved in the application process for OAW parolees include the Field Operations Directorate; the Refugee, Asylum, and International Operations Directorate; and the Service Center Operations Directorate.

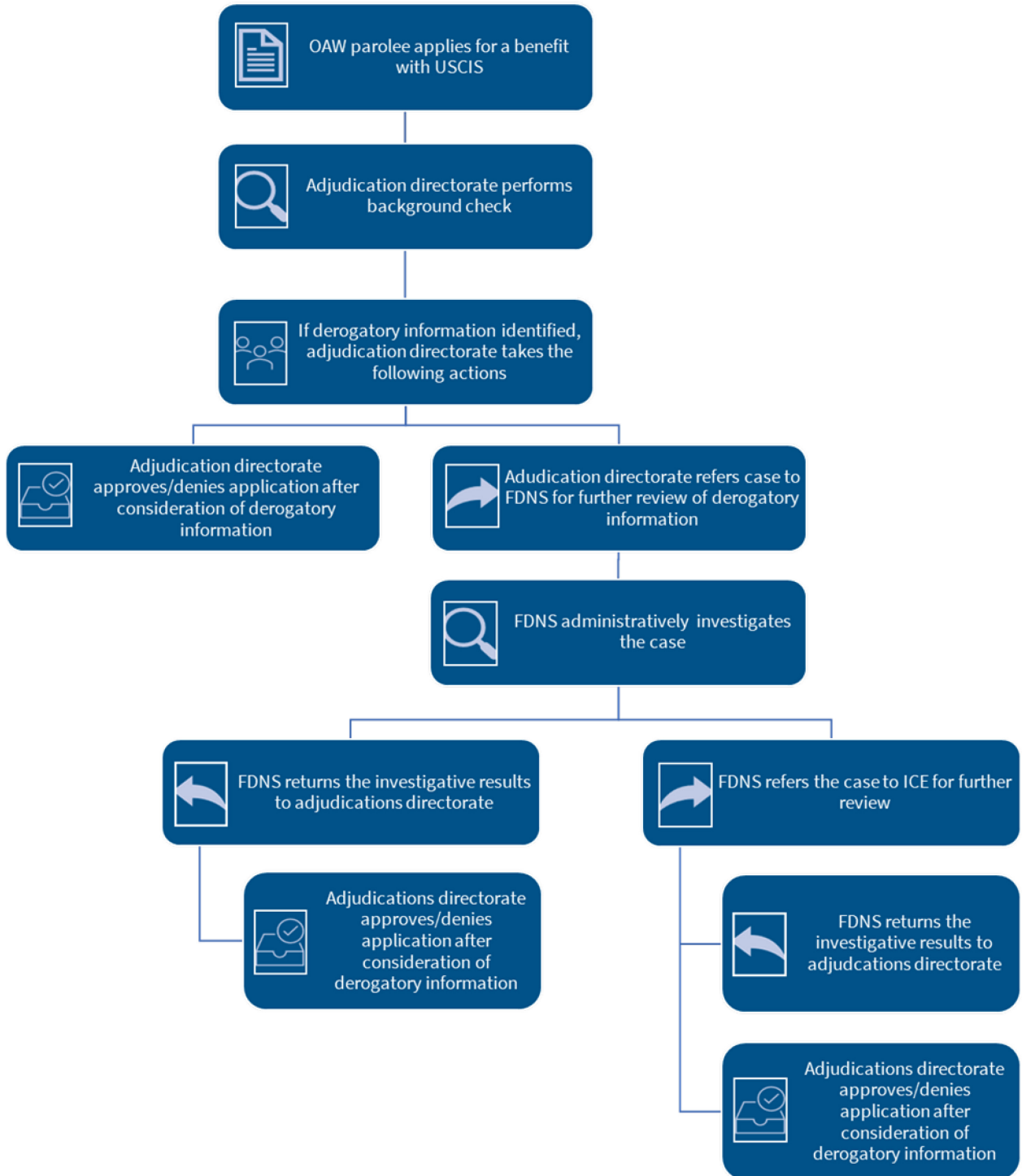
¹⁶ USCIS also receives information on OAW parolees from VSAs via NVC as part of the updated classified vetting process.



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Figure 1. USCIS Derogatory Information Identification and Resolution Process for OAW Applicants



Source: OIG analysis of USCIS documents



As demonstrated in Figure 1, USCIS may handle derogatory information internally through the adjudication process or it may refer a case to ICE for further criminal investigation and potential enforcement action before completing adjudication of the case.

ICE's Derogatory Information Identification and Resolution Process for OAW Parolees

ICE identifies and resolves derogatory information for OAW parolees when USCIS FDNS sends a case referral to ICE, or a law enforcement agency (LEA) notifies ICE of a parolee's arrest.¹⁷ ICE reviews the case information and determines whether the OAW parolee should be placed in removal proceedings based on DHS immigration law enforcement priorities.

When USCIS FDNS sends a case referral for review, ICE will either accept the referral for investigation or decline the referral and send the case back to USCIS for application adjudication. When ICE accepts a case referral from USCIS, it will review and identify derogatory information to determine whether to take enforcement action by referring the case for potential prosecution or placing the OAW parolee into removal proceedings.

ICE is also informed of OAW parolees with potential derogatory information through LEAs. LEAs can notify ICE when an OAW parolee has been arrested and is in their custody or ICE can independently identify that an OAW parolee is in law enforcement custody through matches of biometric and biographical data in DHS-shared information systems. When ICE learns that an OAW parolee has been arrested and is in LEA custody, and determines the individual is a removable noncitizen, ICE can lodge an immigration detainer in some jurisdictions. An immigration detainer informs an LEA that ICE intends to assume custody of the individual upon release from LEA custody.

After reviewing relevant case information, ICE may decide to lift the detainer because the OAW parolee was convicted of a lesser charge that did not meet DHS enforcement priorities or the OAW parolee's criminal charges were dismissed. In these situations, ICE will likely not take any further enforcement action and the OAW parolee will maintain their parole status. If an OAW parolee is convicted of a crime at a level that meets enforcement priorities, ICE can place the OAW parolee into removal proceedings immediately, or upon completing their sentence in local custody or Federal prison.




¹⁷ Through its role in the NVC vetting process, ICE HSI also received and reviewed OAW parolee referrals from VSAs in a classified process.




Overview of Federal Entities' Roles in the Derogatory Information Identification and Resolution Process

The process of identifying and resolving derogatory information for OAW parolees involves collaboration between several DHS components and other Federal partners. In particular, these Federal entities share data on OAW parolees' derogatory information through common information systems and refer cases to other entities for further review or action. See Figure 2 for an overview of Federal entities' roles in identifying and resolving derogatory information for OAW parolees.

Figure 2. Federal Entities' Roles in the Derogatory Information Identification and Resolution Process for OAW Parolees

 <p>U.S. Customs and Border Protection</p>	<ul style="list-style-type: none">❖ Evaluated derogatory information in collaboration with Federal partners during initial screening and vetting prior to OAW parolees' arrival in the United States; inspected OAW parolees at POEs after arrival❖ Initiated the classified vetting process that continuously monitors derogatory information for OAW parolees❖ Provided information to USCIS, ICE, and VSAs through shared information systems
 <p>U.S. Citizenship and Immigration Services</p>	<ul style="list-style-type: none">❖ Reviews derogatory information for OAW parolees during the immigration benefits application review and adjudication process❖ Obtains derogatory information from shared information systems❖ Collaborates with other Federal partners during the classified vetting process❖ Refers cases of potential derogatory information requiring enforcement action to ICE
 <p>U.S. Immigration and Customs Enforcement</p>	<ul style="list-style-type: none">❖ Collaborated with other Federal partners during the classified vetting process❖ Reviews case referrals from USCIS❖ Initiates enforcement actions against OAW parolees with confirmed derogatory information



 <p>Other Federal Partners</p>	<ul style="list-style-type: none">❖ Collaborated with CBP during initial screening and vetting of OAW evacuees❖ Continuously identify derogatory information for OAW parolees and input into shared information systems❖ Collaborated with ICE and USCIS during the classified vetting process
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Source: OIG Analysis of DHS information

Results of Evaluation

DHS Has a Fragmented Process for Identifying and Resolving Derogatory Information for OAW Parolees

Three DHS components—CBP, USCIS, and ICE—have separate but interconnected processes for identifying and resolving derogatory information for OAW parolees. We found vulnerabilities in the USCIS and ICE processes for resolving derogatory information. Specifically, we identified:

- a potential USCIS enforcement gap for OAW parolees denied immigration benefits;
- USCIS’ case referral criteria do not align with ICE’s case acceptance criteria;
- changes to DHS immigration law enforcement priorities that may result in different enforcement action thresholds for certain cases; and
- a complex ICE process for removing OAW parolees to Afghanistan that depends on a third-party country.

In addition, we found that DHS did not have a process for monitoring parole expiration and the guidelines for determining re-parole for OAW parolees were undefined. We also found data errors in USCIS and ICE records for the OAW population.

Gaps Exist in USCIS Enforcement Actions for OAW Parolees Who Are Denied Immigration Benefits

We found that USCIS will not initiate removal proceedings against an OAW parolee or terminate parole when it denies a benefit application due to derogatory information, especially when parole has not expired at the time of the denial. This is because denial of benefits is not an



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automatic cause for removal or parole termination under current USCIS policy¹⁸ and USCIS' primary role is as an immigration benefits provider rather than an LEA.

In circumstances when USCIS does initiate an enforcement action against a noncitizen, it issues a Notice to Appear (NTA)¹⁹ that instructs the individual to appear before an immigration judge (IJ). USCIS issuing an NTA is the first step in starting removal proceedings against a noncitizen. Under internal USCIS guidance, USCIS may only initiate removal proceedings in the following circumstances:

- pursuant to regulation;
- as required by court order or settlement agreement;
- based on litigation need; and
- at the written request of the noncitizen applicant if the noncitizen is removable from the United States and has previously filed a benefit request with USCIS.

USCIS officials said that while an OAW parolee maintains a valid parole, as a matter of policy, USCIS generally would not initiate removal proceedings after denying the OAW parolee an immigration benefit. Officials explained that a determination of ineligibility for some benefits such as asylum or permanent residency is separate from a determination to terminate parole. USCIS reviews derogatory information to determine whether it affects eligibility for the benefit requested. Not all forms of derogatory information render an individual removable or are relevant to a particular benefit's eligibility determination.

USCIS would also not initiate removal proceedings for a parolee whose application it had denied and whose parole later expired. A USCIS official explained that absent extenuating circumstances, if USCIS denies the benefit when parole is still active, the applicant retains valid parole. The official continued that USCIS would not take any additional action when the parole expires because there would be no pending application to adjudicate or basis for USCIS to initiate removal proceedings.²⁰ As a result, an OAW parolee whose parole has expired and who

¹⁸ USCIS is currently operating under informal interim guidance for issuing NTAs issued in August 2022. This guidance defines the circumstances in which USCIS can initiate removal proceedings for noncitizens and will be in effect until USCIS issues formal guidance. In addition, USCIS Policy Manual Volume 3 (Humanitarian Protection and Parole) Part F (Parolees) states that parole may be terminated upon written notice to the noncitizen if USCIS determines the purpose for which the parole was authorized has been accomplished or if USCIS determines that neither humanitarian reasons nor public benefit warrant the continued presence of the parolee in the United States.

¹⁹ Within DHS, CBP, USCIS, and ICE are authorized to issue and file with an immigration court an NTA (Form I-862). An NTA is a charging document to initiate removal proceedings against an individual under INA § 240, *Removal Proceedings*.

²⁰ However, if an individual is still in valid parole status pursuant to their initial CBP parole, USCIS will refer the derogatory information to CBP to consider whether to terminate the individual's parole. It is longstanding DHS practice that ICE, CBP, and USCIS do not terminate parole that was granted by one of the other components.



has already been denied a benefit may not face enforcement consequences for remaining in the United States without legal status.

USCIS officials emphasized USCIS can only initiate removal proceedings against a noncitizen when specific grounds exist under the INA. According to USCIS officials, because USCIS is not an LEA, when the information does not support initiation of removal proceedings by USCIS, another option is to refer cases with derogatory information to ICE for potential enforcement action. An official explained that any denial of immigration benefits or status for an OAW parolee that could potentially result in removal would require extensive coordination between USCIS and ICE officials and staff. The same official said the decision on how to handle Afghans in this circumstance may need to be a Department-level decision. As of March 2023, USCIS had not initiated removal proceedings for any OAW parolees.

USCIS' Case Referral Criteria Do Not Align with ICE's Case Acceptance Criteria

As previously noted, USCIS FDNS refers certain cases of identified derogatory information to ICE Enforcement and Removal Operations (ERO) for further investigation and potential enforcement action. We found that ICE frequently declined certain USCIS case referrals, which we believe indicates a potential vulnerability in the process wherein both USCIS and ICE are spending time and resources on referrals that do not result in ICE enforcement actions.

We reviewed the USCIS-ICE referral process for egregious public safety (EPS) cases as defined in the *Memorandum of Agreement Between USCIS and ICE Regarding the Referral of Immigration Benefit Fraud and Public Safety Cases*, Dec. 2020 (USCIS-ICE MOA). This memorandum establishes guidelines for the investigation and referral of cases with immigration public safety concerns.²¹ The USCIS-ICE MOA defines an EPS case as one where a noncitizen is under investigation or arrest or was convicted of certain criminal acts. These criminal acts include those defined in the INA²² such as:

- murder, rape, or sexual abuse of a minor;
- illicit trafficking of controlled substances;
- illicit trafficking in firearms or destructive devices; or
- crimes of violence with a penalty of at least 1 year.

The USCIS-ICE MOA requires USCIS to notify or refer to ICE all applications, petitions, requests, and or denials with suspected egregious public safety concerns involving alleged criminal noncitizens for potential enforcement action. When USCIS sends EPS referrals, ICE can either

²¹ The memorandum also covers the referral process for benefit fraud and discusses the ICE components responsible for investigating national security concerns. This evaluation focused on referrals related to EPS concerns and did not include referrals related to national security, fraud, and non-EPS public safety cases.

²² See INA § 101(a)(43).



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accept the referral for investigation and potential enforcement action or decline the referral and send the case back to USCIS for benefit application adjudication. According to the USCIS-ICE MOA, USCIS refers EPS cases to ICE ERO subject to the exceptions outlined in the MOA for human rights violators, known or suspected street gang members, or Interpol hits.²³

We found that ICE ERO declined 94 percent of EPS cases for the OAW population as of March 2023. See Table 2 for the number of ICE acceptances and denials for the OAW population's EPS referrals.

Table 2. ICE EPS Referral Acceptances and Denials for OAW Population

Case Status	Number of Cases	Percentage of Total Cases
Declined by ICE ERO	118	94%
Accepted by ICE ERO	2	2%
Pending Review by ICE ERO	5	4%
Total	125	100%

Source: FDNS data as of March 9, 2023

ICE ERO has declined the majority (approximately 88 percent)²⁴ of all USCIS EPS referrals since 2014. This includes declinations from the OAW population as noted in Table 2. USCIS officials told us that the declination rate is high because of a misalignment between what the USCIS-ICE MOA requires USCIS to refer to ICE and what ICE accepts for enforcement action to comply with DHS enforcement priorities. For example, according to the USCIS-ICE MOA, USCIS must refer EPS cases to ICE when information indicates that a noncitizen is under investigation or arrest or was convicted of an EPS crime. However, due to internal guidelines ICE may only accept cases involving noncitizens convicted of an EPS crime, and not those where the noncitizen is under investigation or arrest, as outlined in the MOA. This results in ICE declining most USCIS EPS referrals.

²³ The USCIS-ICE MOA outlines that offenses relating to human rights violators, including noncitizens who persecuted others as described in the INA, known or suspected street gang members, or Interpol hits are categorized as EPS, but must be referred to ICE differently than other EPS concerns. Noncitizens under this category of EPS may not immediately be removable under the INA and require further criminal or administrative investigation by ICE. As such, these cases are referred to designated components of ICE HSI rather than ICE ERO. Our evaluation focused on EPS referrals to ICE ERO as these cases constituted 125 of 129 (97 percent) of the OAW population EPS referrals to ICE as of March 9, 2023.

²⁴ From March 2014 to July 2023, ICE ERO declined 57,568 out of 65,273 (88 percent) of EPS referrals from USCIS.



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Additionally, USCIS refers EPS cases that are outside ICE ERO's enforcement priorities in part because USCIS lacks access to applicants' complete criminal history from the Federal Bureau of Investigation's (FBI) National Crime Information Center Interstate Identification Index (Triple I) System. According to a USCIS official, the FBI does not consider USCIS a criminal justice agency and deems immigration and naturalization issues as noncriminal justice matters. As such, the FBI has denied USCIS full access to Triple I. USCIS submits fingerprint checks to the FBI. However, these checks may not provide a complete criminal history.

Both USCIS and ICE officials pointed to the USCIS data access limitation's effect on the EPS referral process. EPS referrals to ICE ERO delay USCIS adjudication decisions because USCIS suspends the adjudication process when an open referral or investigation is pending with ICE. According to the USCIS-ICE MOA, ICE has 60 days to notify USCIS that a referral has been declined or accepted for further investigation. Therefore, the referral process extends the USCIS adjudication timeframe for individual cases but may not change the adjudicative outcome.

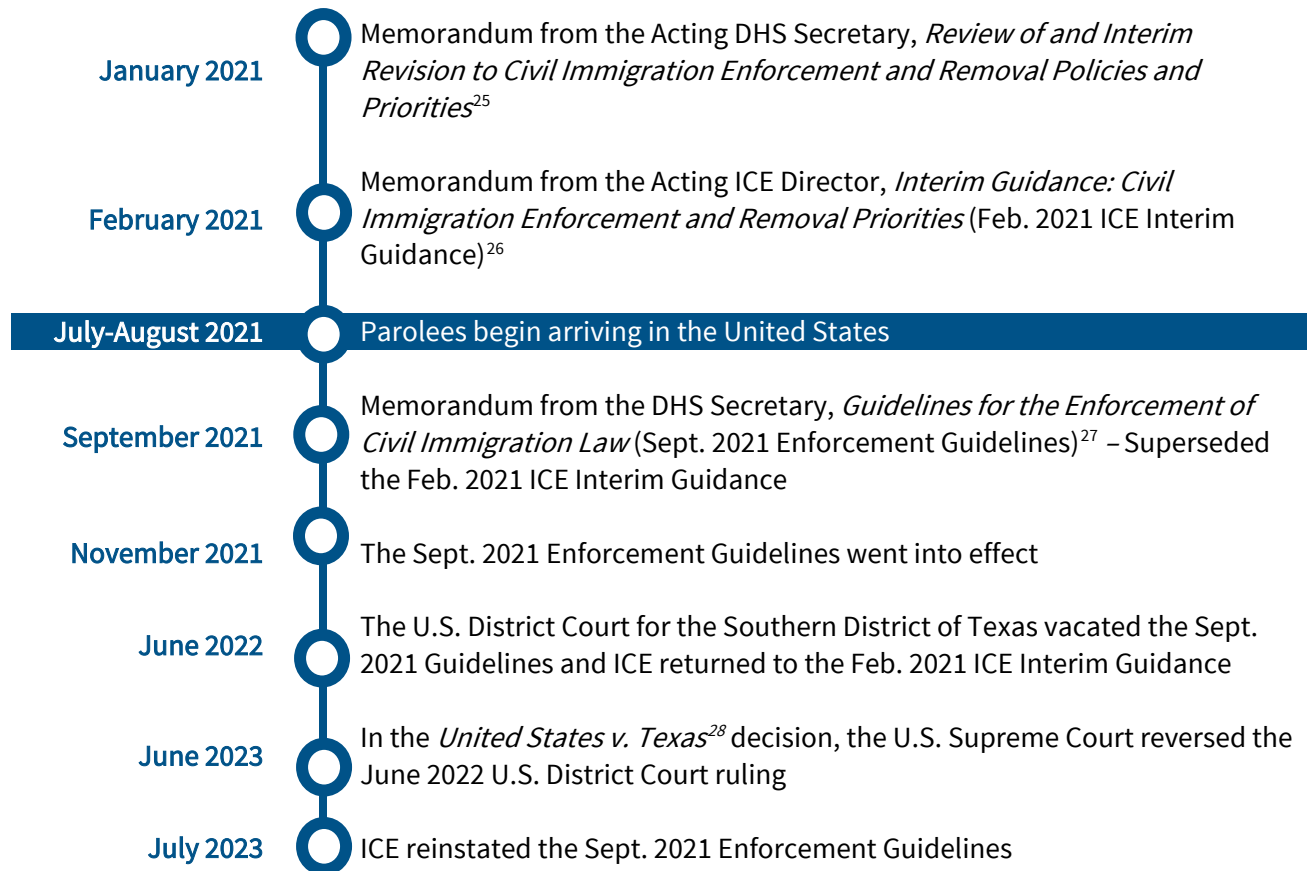
For ICE, reviewing EPS referrals adds to the workload of ICE ERO staff. One ICE official described the EPS referral process as a source of frustration for ICE. This official explained that criminal targeting specialists must review each referral to determine if the subject is removable and USCIS' referral process presents "a lot of noise" because of the high number of referrals involving nonremovable subjects. To address the high declination rate of EPS referrals, USCIS and ICE officials have created a workgroup to help revise the USCIS-ICE MOA in consideration of USCIS data access limitations.

Changes to DHS Immigration Law Enforcement Priorities May Result in Different Enforcement Action Thresholds for Certain Cases

We found that ICE ERO's overall ability to take enforcement actions against noncitizens with derogatory information was affected by changing DHS immigration law enforcement priorities. These changes altered the criteria for determining enforcement actions for EPS cases. See Figure 3 on the following page for a timeline of changes to DHS and ICE enforcement priorities.



Figure 3: Timeline of Changes to DHS and ICE Enforcement Priorities



Source: OIG depiction of DHS documents and court rulings

As displayed in Figure 3, changes in ICE enforcement priorities centered on the Feb. 2021 ICE Interim Guidance and Sept. 2021 Enforcement Priorities. These two different enforcement priority documents changed the thresholds and criteria for ICE to take enforcement action when they had identified derogatory information. For example, the Feb. 2021 ICE Interim Guidance directed ICE to focus resources on cases under national security, public safety, and border security priorities. It also defined criteria for ICE officials to lodge a detainer, detain a noncitizen in ICE ERO custody, and initiate removal proceedings. For EPS, it specified that a noncitizen is

²⁵ DHS Memorandum, [Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities](#), Jan. 20, 2021

²⁶ ICE Memorandum, [Interim Guidance: Civil Immigration Enforcement and Removal Priorities](#), Feb. 18, 2021

²⁷ DHS Memorandum, [Guidelines for the Enforcement of Civil Immigration Law](#), Sept. 30, 2021

²⁸ See *United States v. Texas*, 599 U.S. 670 (2023).



presumed to be an enforcement and removal priority if he or she posed a threat to public safety and had been convicted of an aggravated felony or other serious offences.²⁹

By contrast, the Sept. 2021 DHS Enforcement Guidelines maintained the three priority areas but did not reference the aggravated felony threshold for EPS cases. Instead, the guidance stated that the decision on whether a noncitizen “poses a current threat to public safety is not to be determined according to bright lines or categories.” This guidance, therefore, gave ICE more discretion in determining whether to take enforcement action as a result of certain derogatory information. Moving forward, ICE’s decisions to initiate removal proceedings will rely on DHS guidance in the Sept. 2021 DHS Enforcement Guidelines specifying that ICE personnel should consider the totality of the facts and circumstances for individual cases.

During our review of ICE’s process for resolving derogatory information for OAW parolees, we found that ICE ERO used discretion for enforcement action decisions on a case-by-case basis and considered the enforcement priorities and other factors. Specifically, ICE decisions on accepting case referrals, issuing detainers, and initiating removal proceedings for OAW parolees involved considering the following:

- frequently changing DHS enforcement priorities;
- the availability of derogatory information, such as criminal records for individual OAW parolees;
- potential mitigating factors such as a parolee’s health information; and
- differences in state and circuit courts.

Final Resolution for Individual Cases of Derogatory Information

We evaluated ICE enforcement actions against OAW parolees to determine the final resolution for identified derogatory information. We found that ICE enforcement actions for OAW parolees included issuing detainers, initiating removal proceedings, and removing parolees from the United States. Ultimately, IJs made the final decisions on whether to remove OAW parolees from the United States as a result of derogatory information.

We found that ICE issued detainers for 11 OAW parolees from August 2021 to March 2023. We reviewed the accompanying ICE arrest and criminal case documents for these parolees. In these cases, either LEAs or military police arrested the OAW parolees and alerted ICE that OAW

²⁹ The Feb. 2021 ICE Interim Guidance, Priority Category 3, Public Safety states, “A noncitizen is *presumed* to be a public safety enforcement and removal priority if he or she poses a threat to public safety and: 1) he or she has been convicted of an aggravated felony as defined in section 101(a)(43) of the INA; or 2) he or she has been convicted of an offense for which an element was active participation in a criminal street gang, as defined in 18 U.S.C. § 521(a), or is not younger than 16 years of age and intentionally participated in an organized criminal gang or transnational criminal organization to further the illegal activity of the gang or transnational criminal organization.”



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parolees were held in local custody. These OAW parolees were later convicted of committing crimes such as abusive sexual contact with a minor, indecent exposure, sexual assault, auto grand larceny, assault, and battery. These crimes did not always reach a threshold that led to initiation of removal proceedings. See Table 3 for the case resolutions for the 11 OAW parolees issued detainers between August 2021 and March 2023.

Table 3. Case Resolution for OAW Parolees Issued Detainers

ICE ERO Action	Case Resolution	Number of Cases
NTA Issued	An IJ granted the parolees asylum.	3
NTA Issued	ICE ERO removed the parolee to Afghanistan after an IJ issued a final order of removal.	1
NTA Issued	ICE placed the parolee in an Alternatives to Detention Program* after an IJ granted a deferral of removal.	1
Detainer Lifted	The parolees maintained parole status after the convictions of lesser charges and release from LEA custody.	3
Detainer Lifted	The parolee maintained parole status after dropped charges and release from LEA custody.	1
Detainer Lifted	The parolee received probation and maintained parole status after release from LEA custody.	1
Detainer Pending	The parolee was serving time in Federal prison.	1

Source: OIG analysis of ICE ERO information

* The Alternatives to Detention Program is an ICE ERO tool that monitors noncitizen compliance with final orders of removal or with release conditions while their immigration proceedings are pending on the non-detained docket.

As Table 3 shows, ICE ERO took enforcement actions for OAW parolees as a result of derogatory information. These actions depended on several factors including the DHS enforcement priorities at the time and decisions from IJs.

In addition, we found that ICE ERO removed three OAW parolees from the United States between July 2021 and December 2022 based on final orders of removal. ICE was notified of one OAW parolee through the LEA referral process³⁰ and of the other two parolees during initial processing of the OAW population at temporary housing sites at U.S. military bases during OAW. For the three parolees, the derogatory information included an abusive sexual contact conviction, a

³⁰ ICE ERO issued a detainer for one of the three removed parolees, who is included in Table 3. ICE ERO did not issue detainers for the other two parolees. Instead, ICE ERO arrested one parolee at his place of residence and took the other parolee into custody at temporary housing at a U.S. military base.



murder conviction, and an indication of terrorism-related activity. ICE removed all three parolees from the United States and returned them to Afghanistan as the final resolution of their derogatory information.

ICE ERO Removal of OAW Parolees to Afghanistan is Complex and Depends on a Third-Party Country

As discussed above, ICE ERO removed three OAW parolees from the United States between July 2021 and December 2022 based on final orders of removal. When an IJ issues a final order of removal in an OAW parolee case, ICE ERO coordinates the parolee’s removal to Afghanistan with the United Arab Emirates (UAE). Removals to Afghanistan are complicated and depend heavily on the UAE’s cooperation,³¹ as the UAE became an intermediary for ICE ERO removals to Afghanistan after the collapse of the Afghan government in 2021. Currently, the U.S. Government is unable to work with the Afghan government directly to acquire official travel documents for removing individuals.

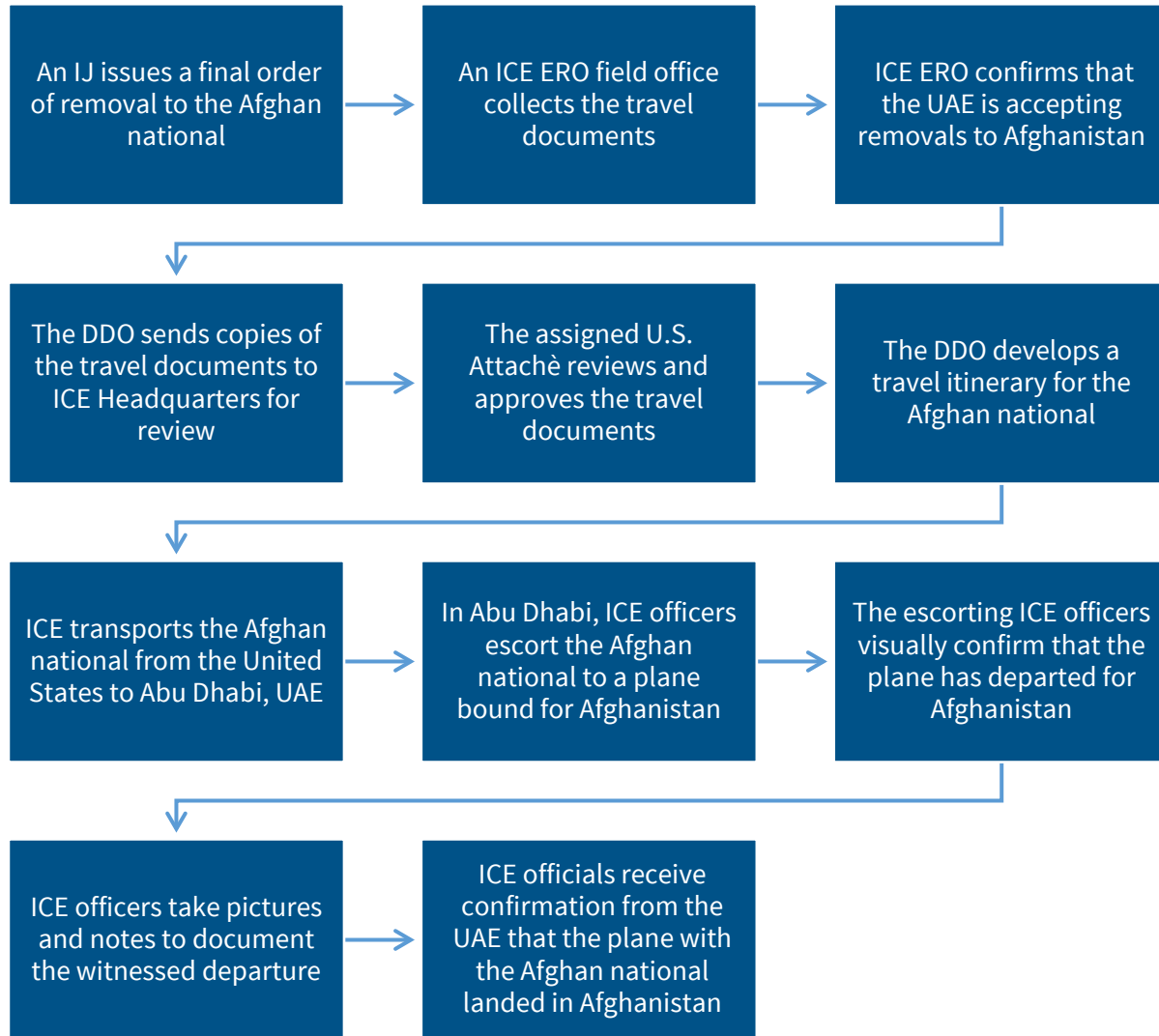
ICE ERO officials said the removals to Afghanistan depend on the UAE in two ways. First, the UAE has agreed to accept unofficial versions of travel documents for Afghan nationals. According to an ICE ERO official, the UAE has accepted current and expired passports, copies of current and expired passports, original and copies of birth certificates, and Afghan identification cards. This differs from ICE ERO’s normal process, which requires providing official and up-to-date travel documents to the individual’s governmental attaché or consulate. During the removal process, a Detention and Deportation Officer (DDO) verifies the travel documents, sends them to ICE Headquarters Removal and International Operations for review, and then ICE forwards the travel documents to a U.S. Attaché for a final review and approval. An ICE ERO official noted that the process is not without problems and issues with documentation arise from time to time.

Second, the removals also depend on the UAE allowing ICE officials to physically observe individuals departing on flights from Abu Dhabi bound for Afghanistan in a “witnessed departure” process. ICE ERO would normally escort removed individuals on their flights directly back to their country of origin. See Figure 4 on the following page for an overview of the removal process for Afghan nationals.

³¹ According to a PLCY official, the removal process is not unique to Afghanistan and has been a longstanding historical limitation with all countries where the United States does not have diplomatic relations.



Figure 4. ICE Removal Process for Afghan Nationals



Source: OIG depiction of information obtained from ICE ERO

The UAE witnessed departure described in Figure 4 was the only process ICE ERO had for removing Afghan nationals to Afghanistan at the time of our review. An ICE ERO official said the main potential challenge for removals to Afghanistan would be if the UAE stopped accepting unofficial travel documents and disallowed witnessed departures. Without the UAE’s cooperation, ICE ERO’s ability to remove Afghan nationals would be in jeopardy, likely causing significant delays in an already complex process.



DHS Does Not Have a Process for Monitoring Parole Expiration and the Guidelines for Determining Re-Parole for OAW Parolees were Undefined

We found that DHS does not monitor parole expiration for individual OAW parolees. Additionally, at the time of our review, it was unclear how DHS would consider derogatory information or denial of an immigration benefit in the re-parole process. Between July 2021 and September 2022, approximately 77,000 OAW evacuees received humanitarian parole into the United States for 2 years. Parole for the Afghans in this population started to expire in the summer of 2023. However, beginning June 8, 2023, OAW parolees could request an additional parole period for up to 2 years through USCIS' streamlined re-parole process for OAW parolees. Prior to this date, OAW parolees could request an additional period of parole through the regular Form I-131 re-parole process. Additionally, on a case-by-case basis, USCIS may extend the initial period of parole for up to 2 years for individual OAW parolees who meet certain criteria. This parole extension does not require an application from the OAW parolee. OAW parolees who have not applied for re-parole, had their initial period of parole extended, or applied for other status by the expiration of their original parole may be unlawfully present in the United States.

DHS Does Not Monitor Parole Expiration for Individual OAW Parolees

We found DHS does not have a process to monitor parole expiration for individual OAW parolees and has not designated a component to monitor their parole expiration. CBP, USCIS, and ICE officials uniformly believed this was not their responsibility. In addition, we could not determine whether any DHS component is responsible for monitoring parole expiration for parolees.

Although CBP granted the original humanitarian parole for evacuees during OAW, CBP officials told us that once they paroled an OAW evacuee, USCIS and ICE would monitor the parole status of individual parolees. However, both USCIS and ICE officials confirmed they are not monitoring the end of parole for individual OAW parolees.

According to USCIS officials, USCIS is not monitoring parole status for OAW parolees because USCIS is a benefit provider and not a law enforcement component. USCIS does not plan to contact all OAW parolees individually about their parole expiration. Instead, USCIS plans to inform the OAW population of re-parole through mass communication methods such as speaking events and support centers and nonprofit organizations. Additionally, on a case-by-case basis, USCIS extended the initial period of parole for up to 2 years for individual OAW parolees who met certain criteria and notified them of the extension of their initial period of parole by sending them a Form I-797, Notice of Action. However, USCIS officials indicated they would not monitor the end of parole for individual parolees or initiate removal proceedings when parole expires.

An ICE official said they do not have enough staff to monitor parole expiration for OAW parolees. To describe the scope of ICE's responsibilities, one ICE official explained that although ICE has



only approximately 6,000 officers, it must monitor millions of people undergoing removal proceedings, in ICE custody, or in ICE's Alternatives to Detention Program.³² The official explained an OAW parolee whose parole has expired would not be on ICE's radar unless they commit a crime. Another ICE official stated that when a noncitizen is present without status such as when parole expires or is terminated, ICE will take enforcement actions on a case-by-case basis, in accordance with enforcement priorities DHS set.

Based on these statements from the three operational components, we conclude that DHS is not monitoring parole expiration and cannot ensure that OAW parolees will remain lawfully present after their parole expiration.

DHS' Guidelines for Considering Derogatory Information for Re-Parole Application were Undefined

In June 2023, DHS implemented the re-parole and parole extension processes for the OAW population. For re-parole, individuals must contact USCIS to apply either by paper or online via Form I-131, *Application for Travel Document*. USCIS then considers, on a case-by-case basis, re-parole requests under the INA.³³ In a separate process, USCIS may extend an OAW parolee's initial period of parole for up to 2 years for individuals who meet certain criteria.³⁴ An OAW parolee applying for re-parole, or an extension of the initial parole, will undergo screening and vetting as part of the approval process. An individual's original employment authorization document is also extended by an approved re-parole application or an extension of the initial parole.³⁵

USCIS is responsible for granting re-parole or extending parole for the OAW population rather than with CBP, which granted initial parole. During our review, USCIS and PLCY officials indicated that DHS was still considering how to evaluate derogatory information or prior denial of an immigration benefit in the decision to grant re-parole. During the re-parole and extension of parole review processes, USCIS officials may have to consider derogatory information identified since the initial parole and, in some instances, how to handle re-parole requests or

³² According to ICE, ICE oversaw approximately 4.5 million noncitizens on the non-detained docket through the end of July 2022, and of those noncitizens, more than 350,000 participated in the Alternatives to Detention Program. See <https://www.ice.gov/features/atd> for additional information.

³³ INA § 212(d)(5) gives the DHS Secretary discretionary authority to grant parole into the United States. In addition, parole may be terminated upon written notice to the noncitizen if the DHS Secretary determines that the purpose for which the parole was authorized has been accomplished or that neither humanitarian reasons nor public benefit warrant the continued presence of the parolee in the United States.

³⁴ OAW parolees are eligible for a parole extension if they entered the United States on or after July 31, 2021, within a designated class of admission such as OAR, and with a pending asylum or adjustment of status application.

³⁵ If approved for parole extension, the original employment authorization will be extended through the issuance of a Form I-797C, *Notice of Action Form*, sent to the applicant's last address of record with USCIS. Form I-797C will serve as proof of the extended employment authorization.



parole extensions when USCIS has denied a parolee's immigration benefits. DHS had not yet finalized guidelines for this consideration of derogatory information by the end of this review in July 2023.³⁶

Data Inaccuracies Exist in ICE and USCIS Records for the OAW Population

We found inaccuracies in USCIS and ICE data that could make it difficult to identify and reconcile information for individuals in the OAW population.³⁷ Maintaining accurate and complete data is critical for DHS to grant eligible individuals immigration benefits and take enforcement actions when necessary.

Some data inaccuracies related to Alien numbers (A-numbers).³⁸ USCIS officials noted that some OAW parolee records are missing A-numbers or have multiple A-numbers assigned to one individual. We also identified at least one instance of two separate individuals with the same A-number assigned. These types of errors may complicate individuals' efforts to apply for benefits and receive accurate documentation, such as an employment authorization document, from USCIS. USCIS officials said that they are aware of the issues with data inaccuracies and were working to address them.

In another example, we identified a case in ICE records where an OAW parolee's name was spelled two different ways, with a different A-number assigned to each spelling. This parolee had four identification numbers associated with the two different spellings of their first name. We also found errors with the names associated with specific detainer identification numbers in ICE information systems. As an example, one OAW parolee had two different subject identification numbers and detainer identification numbers assigned for the same enforcement action.

USCIS and ICE personnel must have accurate information on individuals to ensure the integrity of the adjudication and enforcement processes. Data errors may negatively impact USCIS and ICE staff's ability to identify individuals quickly and accurately within the OAW population and appropriately connect individuals with accurate information such as biographic or criminal history data.

³⁶ After our fieldwork, DHS provided us with updated information outlining the NVC's role in providing continuous vetting support during the re-parole and parole extension processes.

³⁷ We also reported on OAW data integrity issues in the report, [The Unified Coordination Group Struggled to Track Afghan Evacuees Independently Departing U.S. Military Bases](#), OIG-22-79, Sept. 29, 2022. We found DHS struggled to track Afghan evacuees who independently departed U.S. military bases during OAW due in part to data quality issues including missing dates and contact information for evacuees.

³⁸ A-numbers are unique numbers DHS assigns to individual noncitizens and uses to identify the noncitizen in DHS systems and records.



Conclusion

DHS has a multifaceted but fragmented process for identifying and resolving issues for noncitizens with derogatory information, including OAW parolees. This siloed approach creates potential gaps in DHS components' responsibility for terminating parole, initiating removal proceedings, or monitoring parole expiration. The process was complicated by litigation surrounding DHS' immigration law enforcement policies and factors such as consideration of derogatory information during the re-parole and parole extension processes. DHS must consider how to address the vulnerabilities in the USCIS and ICE processes for resolving derogatory information and to establish processes for both managing the end of parole and ensuring data integrity.

Recommendations

Recommendation 1: We recommend the Director of USCIS develop USCIS guidelines on terminating OAW parole and making referrals to ICE for enforcement action.

Recommendation 2: We recommend the Director of USCIS and Director of ICE update the USCIS-ICE MOA in consideration of USCIS data access limitations.

Recommendation 3: We recommend the Director of USCIS and Director of ICE continue to review and update records for OAW parolees to improve data accuracy for individual records.

Recommendation 4: We recommend the DHS Secretary clarify DHS component responsibility for monitoring and addressing parole expiration for OAW parolees without other long-term status to ensure individuals are lawfully present in the United States after parole expiration.

Recommendation 5: We recommend the Under Secretary for Strategy, Policy, and Plans coordinate with USCIS and ICE to develop guidelines for consideration of factors such as derogatory information and prior decisions on benefit requests during the re-parole and extension of parole processes.

Management Comments and OIG Analysis

We have included a copy of DHS' Management Response in its entirety in Appendix B. We also received technical comments on the draft report and revised the report as appropriate. In response to our draft report, DHS expressed concerns regarding how the report characterized the evaluation of information during the vetting process, PLCY's involvement in the derogatory information identification and resolution process, DHS' monitoring of parole expiration, and policies and guidelines relevant to USCIS.



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DHS officials stated the draft report did not adequately describe how components evaluate and adjudicate information during the vetting process, especially regarding VSAs' role in the process and the report's categorization of derogatory information related to national security. Our discussion of the classified vetting process is not a comprehensive description of the entire process. Instead, we provide this information in the background section of the report as an overview of CBP's limited role in the derogatory information identification process through the NVC. We updated and streamlined the report section on the classified vetting process to address DHS' concerns and technical edits.

In addition, DHS officials stated the report inaccurately stated that PLCY may have participated in the derogatory information identification and resolution process. Our report, however, describes CBP, USCIS, and ICE as the three DHS components with operational responsibility within this process and notes that PLCY develops relevant DHS policies for these components. We clarified the roles of the DHS components in the report's background section.

Our report states that DHS did not have a process for monitoring parole expiration for OAW parolees. In its response, DHS officials said that the characterization of "monitoring" in the draft report suggests a need for a surveilling function but does not clarify what the purpose or objective of such a function would or should be. Our report states that DHS does not monitor parole expiration—one aspect of parole. We do not suggest that DHS surveil individual OAW parolees as a general practice. The purpose of DHS' monitoring of OAW parolees' parole expiration is for DHS to be proactively aware of the end of an OAW parolee's parole, and ultimately aware of whether an individual is lawfully present in the United States.

DHS officials also expressed concerns that the draft report did not acknowledge certain documents relevant to USCIS, including the USCIS Policy Manual and the April 2023 NVC privacy impact assessment. We updated the report with references to these two documents as part of the discussion of USCIS guidelines for the derogatory information identification and resolution process for OAW parolees.

DHS officials concurred with our recommendations and described corrective actions to address the issues we identified. We consider all five recommendations resolved and open. A summary of DHS' responses to our recommendations and our analysis follows.

DHS Response to Recommendation 1: Concur. DHS noted actions taken to address this recommendation, including establishing two working groups to develop and update guidelines and processes for terminating parole and making referrals to ICE. DHS estimates these actions to be completed by July 31, 2025.



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OIG Analysis: We consider these actions responsive to the recommendation, which we consider resolved and open. We will close this recommendation when USCIS provides us with the finalized process guidelines.

DHS Response to Recommendation 2: Concur. DHS noted actions taken to address this recommendation, including updating the USCIS-ICE MOA's criteria for the submission, response, and adjudication of referrals sent to ICE. DHS estimates these actions to be completed by July 31, 2025.

OIG Analysis: We consider these actions responsive to the recommendation, which we consider resolved and open. We will close this recommendation when USCIS and ICE provide us with the finalized, updated version of the USCIS-ICE MOA.

DHS Response to Recommendation 3: Concur. DHS noted actions taken to address this recommendation, including the issuance of a policy assessment that standardizes the assignment of primary A-numbers to OAW parolees with multiple A-numbers, and the development of a reference guide for identifying records associated with OAW parole identities in USCIS systems. DHS estimates these actions to be completed by May 31, 2024.

OIG Analysis: We consider these actions responsive to the recommendation, which we consider resolved and open. We will close this recommendation when USCIS and ICE provide us with finalized guidance on addressing data errors for the OAW population.

DHS Response to Recommendation 4: Concur. DHS noted that CBP, USCIS, and ICE already have the ability to identify OAW parolees with expired parole and consider expiration a relevant factor in the adjudication of an immigration benefit or a potential enforcement action. Further, DHS noted it has broad discretion to determine who is subject to enforcement action, and exercise prosecutorial discretion in accordance with its civil immigration priorities. DHS requested the OIG consider the recommendation resolved and closed.

OIG Analysis: We consider these actions responsive to the recommendation, which we consider resolved and open. We agree that CBP, USCIS, and ICE each serve a specific role in the adjudication of an immigration benefit or potential enforcement action for OAW parolees. However, at the time of our report, we found DHS did not have a process or designated component to monitor parole expiration for individual OAW parolees. Officials from CBP, USICS, and ICE uniformly believed monitoring parole expiration was not their responsibility. In addition, at the time of our review, it was unclear how DHS would consider derogatory information or denial of an immigration benefit in the re-parole process.

We will consider this recommendation closed when DHS develops and implements guidance on clarifying DHS component responsibility for monitoring and addressing parole expiration for



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OAW parolees without other long-term status to ensure individuals' lawful presence in the United States after parole expiration.

DHS Response to Recommendation 5: Concur. DHS noted actions taken to address this recommendation, including coordination efforts between relevant components to develop guidelines for how derogatory information is considered during re-parole adjudications. DHS estimates these actions to be completed by June 28, 2024.

OIG Analysis: We consider these actions responsive to the recommendation, which we consider resolved and open. We will close this recommendation when DHS PLCY provides us with finalized guidelines on the consideration of derogatory information during the re-parole and parole extension processes.



Appendix A: Objective, Scope, and Methodology

The Department of Homeland Security Office of Inspector General was established by the *Homeland Security Act of 2002* (Pub. L. No. 107-296) by amendment to the *Inspector General Act of 1978*.

This evaluation's objective was to assess DHS' identification and resolution of potentially derogatory records for OAW Afghan parolees. The scope of our evaluation was Afghan evacuees who were evacuated from Afghanistan by the U.S. government and admitted to the United States via humanitarian parole from July 2021 through September 2022. To answer our objective, we conducted interviews with officials and staff from different DHS components, including CBP, USCIS, ICE, PLCY, and the Office of Biometric Identify Management. We reviewed documents and information, including organization charts, process flowcharts, standard operating procedures, A-files for select OAW parolees, policies and procedures, internal guidance for processing the OAW population, ICE ERO detainer and removal case documentation, and DHS immigration law enforcement priorities. We also analyzed data on USCIS applications and EPS referrals.

We conducted our evaluation between November 2022 and July 2023 under the authority of the *Inspector General Act of 1978*, 5 U.S.C. §§ 401-424, and according to the *Quality Standards for Inspection and Evaluation* issued by the Council of the Inspectors General on Integrity and Efficiency.

DHS OIG's Access to DHS Information

During this inspection, DHS components provided timely responses to DHS OIG's requests for information and did not delay or deny access to information we requested.



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Appendix B: DHS Comments on the Draft Report

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



Homeland
Security

March 12, 2024

MEMORANDUM FOR: Joseph V. Cuffari, Ph.D.
Inspector General

FROM: Jim H. Crumpacker **JIM H**
Director **CRUMPACKER**
Departmental GAO-OIG Liaison Office

SUBJECT: Management Response to Draft Report: “DHS Has a
Fragmented Process for Identifying and Resolving
Derogatory Information for Operation Allies Welcome
Parolees” (Project No. 22-067-ISP-DHS)

Digitally signed by JIM H
CRUMPACKER
Date: 2024.03.12 12:09:53 -04'00'

Thank you for the opportunity to comment on this draft report. The U.S. Department of Homeland Security (DHS, or the Department) appreciates the work of the Office of Inspector General (OIG) in planning and conducting its review and issuing this report.

DHS leadership is pleased to note OIG’s recognition of the Department’s role in bringing approximately 97,000 evacuees to the United States to resettle in American communities as part of Operation Allies Welcome (OAW) and Operation Allies Refuge (OAR), of whom 77,000 (79 percent) were granted humanitarian parole into the United States. During this unprecedented whole-of-government effort, the United States government facilitated the relocation of Afghans whose lives were at risk while prioritizing the maintenance of the national security and public safety of the United States.

More specifically, the Department worked with intelligence, law enforcement, and counterterrorism professionals from the Department of Defense, Federal Bureau of Investigation (FBI), National Counterterrorism Center, Department of State, and other Intelligence Community partners to screen, vet, and inspect all Afghan nationals prior to parole into the United States. DHS continues to support OAW- and OAR-related efforts by processing immigration benefits and applications, such as those for asylum or adjustment of status for these parolees, as well as, where appropriate, by providing individuals with a new parole period, commonly referred to as “re-parole,” if they remain in the United States beyond their initial parole period.

As part of this effort, the U.S. Citizenship and Immigration Services (USCIS), U.S. Immigration and Customs Enforcement (ICE), and U.S. Customs and Border Protection



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(CBP) developed procedures to facilitate coordination amongst themselves and with other entities. These components have strengthened the sharing of parolee information to support both application adjudications and enforcement priorities.

DHS, however, is concerned that OIG's draft report includes information that does not sufficiently describe the Department's policies and processes for identifying and resolving derogatory information for individuals paroled into the United States under OAW.

For example, OIG's draft report does not adequately describe how information is evaluated in the vetting process. The report variously describes information found during the vetting process as "negative," "red," and "derogatory." It does not clearly articulate that information found by Vetting Support Agencies (VSAs) during the vetting process needs to be fully evaluated by an adjudicator before ascertaining if it is a determinative factor in the adjudication or enforcement action. There are times when the adjudicator determines that the information provided by a VSA is not "negative" or "derogatory." VSAs provide links or pointers to underlying information and then go directly to that underlying information to assess its current validity and accuracy and confirm whether it is tied to the identity in question.¹ By categorically characterizing NVC "red" or "green" flags as related to "national security derogatory information," the report inaccurately suggests that all vetting matches relate to a "national security" threat and reflect "derogatory" information otherwise sufficient to support enforcement action or deny immigration benefit requests. However, the term "national security" has a specific meaning in the immigration context based on specific inadmissibility and deportability grounds outlined in the Immigration and Nationality Act (INA).² Evaluation of whether information is "derogatory" is made by the adjudicating agency upon review of an analytically significant identity match, according to the relevant legal standard for deciding the matter at issue.

It is also factually inaccurate for OIG's draft report to state that the DHS Office of Strategy, Policy, and Plans (PLCY) may have participated in the derogatory information identification and resolution process. Rather, PLCY's role was in supporting the development of policies and was not an operational role. It is also inaccurate for the report to state that VSAs share information on red-flagged parolees with ICE Homeland Security Investigations. Rather, VSAs share this information with the DHS NVC. Trained analysts from ICE or any other adjudicating Component such as USCIS have access to an NVC-managed database, High Side Vetting Unified Environment (HiVUE), which displays vetting results.

¹ DHS/ALL/PIA-072, "Privacy Impact Assessment for the National Vetting Center (NVC)," April 11, 2023, <https://www.dhs.gov/publication/dhsallpia-072-national-vetting-center-nvc>.

² See INA §§ 212(a)(3)(A), (B); and 237(a)(4)(A) for security and related grounds.



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Additionally, OIG’s draft report states that DHS did not have a process for “monitoring” parole expiration without explaining how OIG defines “monitoring,” which DHS believes will be misleading to readers of the report. Components can already review and assess parole validity as part of standard business practices that support enforcement of removability under the INA or immigration proceedings. The characterization of “monitoring” in the draft report suggests a need for a surveilling function but does not clarify what the purpose or objective of such a function would or should be. If the purpose of such monitoring is to support proper determinations of removability, DHS components can already access this information and consider it if, and when, relevant to an adjudication or enforcement action.

Lastly, as written, the OIG’s draft report does not acknowledge that the USCIS Policy Manual³ already includes guidelines on how and when parole can be terminated (*see* Volume 3, “Humanitarian Protection and Parole,” Part F).⁴ This Policy Manual was updated in support of Executive Order 14012, “Executive Order on Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans,” dated February 2, 2021.⁵ Additionally, the April 2023 NVC privacy impact assessment provides an overview of how USCIS is using NVC checks to identify and address derogatory information.⁶

DHS previously discussed these and other accuracy concerns with OIG’s inspection team in addition to submitting written technical comments in an effort to correct inaccurate and misleading misinformation in the draft report. DHS also previously submitted technical comments addressing several contextual, sensitivity, and editorial issues under separate cover for OIG’s consideration. We were, however, unable to ascertain the full extent of changes OIG might make to its final report based on our feedback before this management response had to be finalized and provided to the OIG for inclusion in the final report.

The draft report contained five recommendations, with which the Department concurs. Enclosed find our detailed response to each recommendation.

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.

Enclosure

³ <https://www.uscis.gov/policy-manual>

⁴ <https://www.uscis.gov/policy-manual/volume-3-part-f-chapter-1>

⁵ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/02/executive-order-restoring-faith-in-our-legal-immigration-systems-and-strengthening-integration-and-inclusion-efforts-for-new-americans/>

⁶ DHS/ALL/PIA-072, “Privacy Impact Assessment for the National Vetting Center (NVC),” April 11, 2023, <https://www.dhs.gov/publication/dhsallpia-072-national-vetting-center-nvc>.



**Enclosure: Management Response to Recommendations
Contained in OIG 22-067-ISP-DHS**

OIG recommended that the Director of USCIS:

Recommendation 1: Develop USCIS guidelines on terminating OAW parole and making referrals to ICE for enforcement action.

Response: Concur. The USCIS Office of Policy and Strategy (OP&S) will lead the development of additional guidelines to clarify processes for terminating parole and making referrals to ICE (RTI). Specifically, the OP&S Security and Public Safety Division (SPSD) will convene a working group to review existing policies and discuss operational requirements for parole adjudication. The working group will include representatives from relevant operational directorates, other OP&S divisions, and the USCIS Office of Chief Counsel. This working group will convene by June 28, 2024, to review, develop, clear, and distribute additional proposed guidance by March 31, 2025.

In addition, USCIS OP&S and Fraud Detection and National Security Directorate (FDNS) is currently co-leading a working group with ICE Office of Regulatory Affairs and Policy (ORAP) to update agency agreements on RTIs from USCIS for enforcement action, to include updating the December 2020 “Memorandum of Agreement Between The Department of Homeland Security U.S. Citizenship and Immigration Service and Department of Homeland Security U.S. Immigration and Customs Enforcement Regarding the Referral of Immigration Benefit Fraud and Public Safety Cases” (MOA). Upon the completion of ICE updates to this MOA no later than May 31, 2025, USCIS OP&S will also revise the existing RTI policy⁷ to align with the updated MOA to help support program office and directorate implementation of the MOA. Estimated Completion Date (ECD): July 31, 2025.

OIG recommended that the Director of USCIS and Director of ICE:

Recommendation 2: Update the USCIS-ICE MOA in consideration of USCIS data access limitations.

Response: Concur. USCIS OP&S SPSD, FDNS, and ICE ORAP are updating the MOA to align with each agency’s current capabilities, respective missions, and priorities. The

⁷ The primary source for USCIS guidance on the implementation the USCIS-ICE MOA is found in the “National Background Identity and Security Checks Operating Procedure (NaBISCOP), Sec. X. Resolution: Egregious Public Safety Concerns & Other Criminal Cases.” As noted in the NaBISCOP, this agency-wide guidance is supplemented by component-specific guidance with additional information and procedures for its application to different benefit requests.



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updated MOA will establish the mechanics of the agencies' cooperation, communication, and precise RTI criteria and referral parameters, such as:

- Specific criminal violations that warrant referral;
- Timeframe ICE has to consider the referral prior to USCIS' adjudication (pre- or post-adjudication referral); and
- Instances in which USCIS should issue an RTI.

As previously noted, efforts to update the MOA are led by USCIS' OP&S SPSD, FDNS, and ICE ORAP. To inform these discussions, OP&S leads weekly meetings across USCIS to discuss the business and operational implications of RTI changes. However, it is important to note that a revised MOA may not fully remedy the "data limitations" concerns outlined in this audit report due to USCIS's limited access to the full criminal history data available through the FBI's National Crime Information Center III, as USCIS is not a law enforcement agency. ECD: July 31, 2025.

Recommendation 3: Continue to review and update records for OAW parolees to improve data accuracy for individual records.

Response: Concur. USCIS will continue its ongoing efforts to review and update records for OAW parolees. On December 21, 2023, USCIS Immigration Records and Identity Services issued an updated Policy Assessment, "Operation Allies Welcome (OAW) Primary A-Number Determination" as guidance to support standardization in the assignment of primary A-numbers to OAW parolees with multiple A-numbers. This guidance was distributed to all USCIS program offices and directorates, including adjudication directorates, to promote consistencies in handling of OAW parolee records.

In addition, USCIS' Office of the Director has been coordinating efforts to develop a Quick Reference Guide that will outline procedures for identifying and matching records associated with OAW parolee identities in USCIS systems. Once complete, this guide will be made available to all USCIS personnel who handle or use A-file records. ECD: May 31, 2024.

OIG recommended that the Secretary of Homeland Security:

Recommendation 4: Clarify DHS component responsibility for monitoring and addressing parole expiration for OAW parolees without other long-term status to ensure individuals are lawfully present in the United States after parole expiration.

Response: Concur. Enforcement of immigration law is executed across Components, with each Component responsible for a defined mission set. As described elsewhere in this response, CBP, USCIS, and ICE already have the ability to readily identify OAW parolees whose parole has expired and to consider that expiration as a relevant factor in



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the adjudication of an immigration benefit or consideration of a potential enforcement action. Components have well-established guidance on how to execute their respective missions, including evaluating an individual's status as part of any adjudicative process or potential enforcement action. Noncitizens who receive parole are expected either to depart the United States when their authorized stay has lapsed, or, if they wish to remain in the United States, to apply for a benefit, protection, or status, including re-parole where appropriate. DHS has broad discretion to determine who is subject to enforcement action, and exercises prosecutorial discretion in accordance with its civil immigration enforcement priorities. Noncitizens who are a threat to national security, public safety, and border security are prioritized for apprehension and removal.

Given that DHS already has the ability to determine whether an individual's parole has expired and to consider that expiration in any adjudication or potential enforcement action, DHS requests this recommendation be considered resolved and closed as implemented.

OIG recommended that the Under Secretary for Strategy, Policy, and Plans:

Recommendation 5: Coordinate with USCIS, CBP, and ICE to develop guidelines for consideration of factors such as derogatory information and prior decisions on benefit requests during the re-parole process.

Response: Concur. During fiscal year 2024 Quarter 1, PLCY already had work underway coordinating with USCIS, CBP, and ICE to build consensus for the development of guidelines for how derogatory information is considered during re-parole adjudications. Once complete, these guidelines will establish consistency, to the greatest extent practicable, across Components for handling of derogatory information while acknowledging the different legal authorities with which USCIS, CBP and ICE are empowered. ECD: June 28, 2024.



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Appendix C:

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