



# Review of the Institutional Hearing and Removal Program Expansion for Federal Inmates



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# EXECUTIVE SUMMARY

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### Introduction<sup>1</sup>

The Institutional Hearing and Removal Program (IHRP), a joint program of the U.S. Department of Justice (Department or DOJ) and the U.S. Department of Homeland Security (DHS), was established in 1988 following passage of immigration legislation that, among other things, directed the Attorney General to “begin any deportation proceeding as expeditiously as possible” for foreign-born individuals convicted of a deportable offense. The IHRP identifies potentially deportable foreign-born inmates serving sentences in federal, state, and local prisons and begins—and seeks to complete—removal proceedings against them while they are still incarcerated (hereinafter “IHRP inmates”). This results in IHRP inmates potentially spending significantly less time in ICE detention awaiting deportation, as well as cost savings to the federal government.

At the federal level, DOJ’s Executive Office for Immigration Review (EOIR) and Federal Bureau of Prisons (BOP) coordinate with DHS’s Immigration and Customs Enforcement (ICE) and U.S. Citizenship and Immigration Services (USCIS) to complete judicial and administrative immigration review proceedings against foreign-born BOP inmates. IHRP inmates go through the IHRP process while in BOP custody and, if ordered removed from the United States, are transferred to ICE custody to be deported at the end of their sentence.

Starting in 2015, a Working Group consisting of EOIR, BOP, and ICE officials began meeting periodically to discuss ways to expand and reinvigorate the IHRP. On March 30, 2017, the Department announced the expansion of the IHRP at BOP facilities with three goals:

(1) increasing the number of active IHRP facilities, (2) enhancing video teleconference (VTC) capabilities and updating the existing technical infrastructure for holding removal hearings for IHRP inmates, and (3) formalizing a new uniform intake policy.

The Office of the Inspector General (OIG) initiated this review to assess: (1) the Department’s planning and implementation of the IHRP expansion, (2) the steps the Department has taken to coordinate with DHS to plan and implement the expansion, and (3) the direction and guidance the Department provided to its components to expand the IHRP. We also analyzed early data results after the program’s expansion to identify potential impacts.

### Results in Brief

We found that DOJ coordinated with DHS to achieve the three goals of the IHRP expansion. We also found that the guidance and direction from the Department and component headquarters were sufficient to implement the expansion.

We found that the DOJ and DHS agencies involved in the IHRP do not have performance metrics that allow them to assess the impact of the IHRP or its expansion. However, the OIG’s data analysis identified a recent decrease in the average number of days an IHRP participant (an IHRP inmate transferred to ICE detention) spent in ICE custody if a final decision (also known as a final order) was issued while the participant was still in BOP custody. The decrease may be attributable to the expanded IHRP. However, there may be other variables that affected the data points we

<sup>1</sup> At the outset of the coronavirus disease 2019 pandemic in March 2020, the OIG shifted resources to conduct extensive pandemic-related oversight, including of the response by the Executive Office for Immigration Review and the Federal Bureau

of Prisons to the pandemic, which delayed our completion and issuance of this report.

assessed. To fully assess the effect of the expansion and the IHRP itself, the agencies should develop performance metrics and consistently collect the appropriate data.

#### **The Department Increased the Number of Federal IHRP Facilities, Enhanced VTC Capabilities at Federal IHRP Facilities, and Implemented Uniform Intake Policies**

We found that the Department generally met each of the three IHRP expansion goals. The IHRP now operates out of 5 additional BOP facilities, bringing the total number of federal IHRP facilities to 17. Furthermore, all IHRP facilities have new or upgraded VTC equipment and the program has two new intake policies, one that makes it easier for EOIR to identify IHRP cases incoming from ICE and another that centralizes the assessment of potential IHRP inmates entering BOP custody. In addition, the IHRP Working Group finalized a Memorandum of Understanding that details each agency's roles and responsibilities in the program.

We also found that the Department provided sufficient support to initiate the expansion, entrusting the specifics of implementing the expansion to the IHRP Working Group components. We found that the BOP and EOIR provided sufficient guidance and direction about the IHRP expansion to the field.

However, we also found that the IHRP Working Group agencies encountered challenges while expanding the IHRP. These included an increasing immigration caseload and staffing challenges that affected the IHRP expansion at some sites and could potentially affect the IHRP in the future.

#### **Although Neither DOJ nor DHS Has a Plan to Assess the IHRP Expansion, OIG Data Analysis Indicates that IHRP Participants Are Spending Less Time in ICE Detention**

The DOJ and DHS agencies involved in the IHRP independently collect data related to the IHRP but do not have plans to jointly establish performance metrics, collect data, or evaluate the expansion of the program

itself. However, the OIG's data analysis found that IHRP participants are spending significantly less time in ICE detention, possibly due to the program, and that this also results in potential cost savings for the government.

The goal of the IHRP is to issue a final decision on deportation while inmates are still in BOP custody, which typically reduces the time that the IHRP participants spend in ICE detention while awaiting deportation. We found that IHRP participants spent an average of 23 days in ICE detention if they had a final order of deportation prior to release from BOP custody. By contrast, those who did not have a final order when they transferred from BOP custody to ICE detention at the end of their sentence spent an average of 89 days in ICE detention.

Having IHRP participants spend less time in ICE detention before removal reduces the amount of time they are deprived of their freedom. In addition, reducing their time in custody decreases the cost to the government and the taxpayer. We found that the ICE detention costs for IHRP inmates without a final order at the end of their sentence was, on average, twice the cost for the IHRP inmates with a final order issued before their transfer from BOP to ICE custody.

While these results appear to be positive, we cannot directly link them to the IHRP expansion because there are other variables that could affect the data points we assessed. EOIR and ICE individually track elements of the IHRP for their agency performance reports, but there is no collective dataset that contains all the information needed to assess the IHRP or its expansion.

#### **Recommendation**

In this report, we make one recommendation for the BOP and EOIR to work with ICE and the USCIS to develop performance metrics to assess the IHRP expansion and the program itself.

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# Introduction

## Background

The Institutional Hearing and Removal Program (IHRP), a joint program of the U.S. Departments of Justice (Department, DOJ) and Homeland Security (DHS), identifies potentially deportable foreign-born inmates in federal, state, and local prisons who are serving sentences of imprisonment following a criminal conviction (hereinafter “IHRP inmates”) and begins removal proceedings against them. The IHRP was established in 1988 following passage of the Immigration Reform and Control Act of 1986, which, among other things, directed the Attorney General to “begin any deportation proceeding as expeditiously as possible” after the date a noncitizen is convicted of an offense that makes the noncitizen subject to deportation.<sup>2</sup>

According to Executive Office for Immigration Review (EOIR) documents, the program is designed to complete IHRP inmates’ immigration cases before the end of their sentence by holding hearings before Immigration Judges, either in person or by video teleconference (VTC), while the inmates are still incarcerated. According to EOIR, most foreign-born inmates, particularly those in federal custody, are deportable due to the nature of their convictions, and the IHRP aims to eliminate the need to hold individuals for prolonged periods of time in DHS detention facilities in order to assess their deportability following the completion of their prison sentences, thus reducing costs to U.S. Immigration and Customs Enforcement (ICE) and the taxpayer, increasing the efficiency of the immigration system, and contributing to the nation’s security.<sup>3</sup> Additionally, for those inmates who are not deportable, the IHRP enables that determination to be made while the inmates are still serving their prison sentence, thereby allowing those inmates to be released from prison upon completion of their sentence.

In fiscal year (FY) 2018, EOIR reported that it received 308,304 new immigration cases, of which 2,790 (0.9 percent) were IHRP inmates housed in federal, state, or local correctional facilities.<sup>4</sup> Although EOIR does not break out the number of new IHRP cases by type (federal, state, or local) in its public reports, our analysis of EOIR data determined that 29 percent of 2,790 IHRP cases in FY 2018 (or fewer than 1,000 cases) involved inmates incarcerated in a Federal Bureau of Prisons (BOP) or contract facility.<sup>5</sup> Of the remaining IHRP cases, 66 percent involved state inmates and the remaining 5 percent were local/municipal inmates.

## IHRP Working Group and Proposed Program Expansion

In 2015, ICE officials decided to focus resources on IHRP cases in order to improve and expand the program and invited BOP and EOIR officials to meet and discuss how to accomplish that goal. The three agencies

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<sup>2</sup> Pub. L. No. 99-603.

<sup>3</sup> EOIR, “[Institutional Hearing Program Fact Sheet](#),” January 2018, [www.justice.gov/eoir/page/file/1023101/download](http://www.justice.gov/eoir/page/file/1023101/download) (accessed September 16, 2021).

<sup>4</sup> EOIR, [EOIR Statistics Yearbook](#), FY 2018, [www.justice.gov/eoir/file/1198896/download](http://www.justice.gov/eoir/file/1198896/download) (accessed September 16, 2021).

<sup>5</sup> Contract facilities are owned and operated by a private corporation that contracts with the BOP to house federal inmates.

developed the IHRP Working Group, which included headquarters staff responsible for the IHRP from each agency. The IHRP Working Group met periodically in 2015 and the first few months of 2016.<sup>6</sup>

In January 2017, then President Donald Trump signed an Executive Order directing the DHS Secretary to prioritize for removal noncitizens who had been convicted of any criminal offense, among other categories.<sup>7</sup> In addition, the Executive Order required the Attorney General and the DHS Secretary to issue quarterly reports that include the immigration status of all noncitizens incarcerated in the BOP.

In early March 2017, the BOP, EOIR, and ICE reinvigorated the IHRP Working Group that had been created in 2015. The working group began to discuss implementing an IHRP expansion and modernization, including identifying additional BOP IHRP facilities, exploring the logistics of conducting immigration court hearings in the new facilities, assessing existing and additional VTC equipment, devising a methodology to fulfill the Executive Order's reporting requirements, and developing approaches to incorporate the U.S. Citizenship and Immigration Services (USCIS) into the IHRP. The working group invited the USCIS to participate in the meetings and started drafting a Memorandum of Understanding (MOU) that would formalize each agency's role in the IHRP. The working group also worked with the Office of the Deputy Attorney General (ODAG) during this time to help plan the IHRP expansion and modernization.

On March 30, 2017, then Attorney General Jefferson Sessions announced an effort by the Department to expand and modernize the IHRP for federal inmates.<sup>8</sup> Specifically, he stated that the program would be expanded by: (1) increasing the number of BOP and contract prisons that were active IHRP facilities, (2) enhancing VTC capabilities at federal IHRP facilities and updating the existing technical infrastructure for holding removal proceedings, and (3) formalizing a new uniform intake policy between EOIR and ICE.

## Federal IHRP Process

The federal IHRP process involves coordination between DOJ components (the BOP and EOIR) and DHS components (ICE and the USCIS). The BOP is responsible for housing and managing IHRP inmates and coordinating with the other agencies involved in the IHRP. EOIR is responsible for conducting immigration hearings and making decisions on removal and relief for IHRP inmates. ICE is the agency responsible for initiating the IHRP (and removal) process, and the USCIS is responsible for conducting credible fear and reasonable fear screenings for IHRP inmates. The text box below outlines the roles and responsibilities of each DOJ and DHS agency in the IHRP for federal inmates.

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<sup>6</sup> During our review period, the members of the IHRP Working Group included the BOP Correctional Programs Branch Administrator; EOIR's Deputy Chief Immigration Judge; the Unit Chief of ICE's Criminal Alien Program; and the USCIS's Operations Branch Chief and Asylum Officer, Operations Branch, Asylum Division.

<sup>7</sup> Executive Order on Enhancing Public Safety in the Interior of the United States, January 25, 2017.

<sup>8</sup> DOJ Office of Public Affairs, Press Release, "Attorney General Sessions Announces Expansion and Modernization." See [Appendix 2](#) for a copy of the press release.



The federal IHRP process starts when a foreign-born inmate is incarcerated in the BOP following a criminal conviction. An ICE liaison to the BOP, located at the BOP's Central Office, evaluates all foreign-born inmates who enter into BOP custody to determine their eligibility for the IHRP.<sup>9</sup> The liaison determines incoming inmates' citizenship status, their removability from the United States following their sentence, and the necessity of a hearing before an EOIR Immigration Judge to consider their removability.<sup>10</sup>

Generally, the process involves the following steps:

1. When an inmate enters the BOP's custody, the BOP assigns the inmate a country of citizenship based on information provided by the inmate. If the country of citizenship is anything other than the United States, the BOP considers the inmate "foreign born."<sup>11</sup>
2. The BOP sends the ICE liaison daily rosters of incoming inmates containing information related to foreign-born inmates, such as name, country of birth, country of citizenship, and criminal convictions.
3. The ICE liaison vets the information through ICE databases and reviews any additional data to categorize inmates into one of four categories:

- (a) the inmate does not require a hearing because ICE can issue an expedited removal order, an administrative final removal order, or reinstate a prior final order of removal;

#### IHRP Roles and Responsibilities at a Glance

**BOP:** provides a list of all foreign-born inmates to ICE, transfers IHRP-eligible inmates to IHRP facilities, provides space at BOP facilities for VTC equipment, and escorts inmates to hearings.

**ICE:** interviews foreign-born BOP inmates to determine whether they should be designated IHRP, initiates the removal process by filing a Notice to Appear, and attends the hearings at BOP facilities.

**EOIR:** schedules immigration hearings, conducts hearings for IHRP inmates, makes decisions on removal and relief, and maintains VTC and other necessary office equipment at BOP facilities for the program.

**USCIS:** conducts credible fear and reasonable fear screenings and maintains any necessary office equipment for these screenings at BOP facilities.

Source: IHRP MOU

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<sup>9</sup> The ICE liaison is also the point of contact for ICE's Criminal Alien Program academies and DOJ's International Prisoner Transfer Program (Treaty Transfer Program) at the BOP. The Treaty Transfer Program allows the Department to return eligible foreign national inmates to their country of origin to serve the remainder of their prison sentences rather than completing their sentence in the United States. For more information on the Treaty Transfer Program, see DOJ OIG, [Status Review on the Department's International Prisoner Transfer Program](#), Evaluation and Inspections Report 15-07 (August 2015), [www.oversight.gov/sites/default/files/oig-reports/e1507.pdf](http://www.oversight.gov/sites/default/files/oig-reports/e1507.pdf).

<sup>10</sup> A foreign-born inmate is removable if he or she is in the country illegally or subject to any of the grounds for removal listed in the Immigration and Nationality Act of 1990, 8 U.S.C. § 1227. The Act describes various types of criminal convictions that are grounds for removal, including the noncitizen having been inadmissible at the time of entry into the United States.

<sup>11</sup> An inmate can self-report as foreign born.

- (b) the inmate does not require a hearing (is not deportable) because the inmate is a foreign-born U.S. citizen;
  - (c) the inmate requires a hearing before an Immigration Judge; or
  - (d) ICE does not have enough information to make a determination on eligibility for removal.
4. If additional information is necessary to determine the inmate's eligibility for the IHRP, ICE officers in the field office covering the IHRP facility interview the inmate and make a determination.
  5. If ICE determines that it can issue an expedited removal order, administrative final removal order, or reinstate a prior removal order, and the inmate expresses a fear of return, ICE coordinates with the BOP and USCIS to schedule the inmate for a credible fear or reasonable fear screening with the USCIS.<sup>12</sup>

Once ICE determines that an inmate is eligible for the IHRP, the BOP enters an IHRP assignment, or code, into the BOP's inmate management system, SENTRY, which identifies how ICE has categorized the inmate. The IHRP assignment in SENTRY allows BOP staff to monitor and track an inmate's status in the program (see [Appendix 3](#) for a list and definitions of IHRP assignments).<sup>13</sup> When the IHRP inmate has between 48 and 60 months remaining in his or her sentence, the BOP reassigns the inmate to an IHRP facility so that ICE can initiate removal proceedings. If an inmate is sentenced to less than 60 months, the BOP assigns him or her directly to an IHRP facility. [Appendix 4](#) contains a list of IHRP facilities. [Appendix 5](#) contains a flow chart that outlines the IHRP eligibility process.

### **Immigration Removal Proceedings for Federal IHRP Inmates**

The first step in federal IHRP removal proceedings occurs when ICE determines that there are potential grounds to remove an inmate. The ICE field office that geographically corresponds to the location of the BOP IHRP facility serves the inmate a written notice describing the nature of the proceedings, the legal authority under which the proceedings are conducted, the acts or conduct alleged to be in violation of the

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<sup>12</sup> As of May 2021, the USCIS had not yet participated in any IHRP cases.

The USCIS conducts a credible fear interview when an individual who is subject to expedited removal expresses an intention to apply for asylum, expresses a fear of persecution or torture, or expresses a fear of returning to his or her country of birth. The USCIS conducts a reasonable fear interview in two types of cases referred by ICE: (1) in the case of a noncitizen convicted of an aggravated felony against whom a final administrative order of removal is issued or (2) in the case of a noncitizen subject to reinstatement of a prior order of exclusion, deportation, or removal. The reasonable and credible fear screening and adjudication process is outside the scope of this review.

<sup>13</sup> Case Management Coordinators are the BOP field staff responsible for monitoring IHRP inmate status, ensuring that the SENTRY assignments for IHRP inmates are correct, ensuring that IHRP inmates are submitted for transfer when appropriate, acting as a liaison between the BOP and the other IHRP agencies, ensuring that the immigration hearing schedule does not conflict with other institution events, and ensuring that inmates are brought to the hearing rooms when scheduled. BOP Program Statement 5111.04, Institution Hearing Program.



law, and other relevant information.<sup>14</sup> This notice is referred to as a Notice to Appear (NTA). Once the NTA is served upon the inmate, ICE files the NTA with the immigration court of jurisdiction to initiate removal proceedings before an Immigration Judge. ICE's target range for initiating removal proceedings is within 6–60 months before the end of the inmate's sentence.

Across 26 states, EOIR has 41 immigration courts that handle federal, state, and local IHRP cases.<sup>15</sup> When the immigration court receives a federal inmate's NTA from ICE, the Court Administrator or legal assistant assigns the case to an Immigration Judge and coordinates with the BOP and ICE to schedule a hearing. EOIR provides a translator for the immigration hearing if needed.

The majority of IHRP hearings for federal inmates are conducted through VTC. The Immigration Judge, attorney for the IHRP inmate (if the inmate has one), and attorneys representing ICE communicate from the immigration court via VTC with the federal IHRP inmate, who is located in a hearing room at the IHRP facility.<sup>16</sup> Additionally, an ICE officer is usually present in the hearing room at the IHRP facility because ICE has the authority and responsibility to process and explain immigration court documents to inmates. If an Immigration Judge orders an inmate to be removed at the end of the inmate's sentence, the inmate may appeal this decision within 30 days to the Board of Immigration Appeals and subsequently, if necessary, to the appropriate U.S. Circuit Court of Appeals.

At the conclusion of the adjudication process, if the inmate is still in BOP custody, EOIR notifies the BOP of the immigration court's decision. If the inmate is ordered to be removed, the BOP coordinates with ICE for the inmate to be transferred to ICE's custody at the end of the inmate's sentence. ICE will pick up the inmate from the BOP institution and arrange transportation to the inmate's country of origin.<sup>17</sup> If the inmate is not ordered to be removed, the BOP requests and obtains documentation lifting any ICE detainers that may have been filed before the hearing and, when appropriate, initiates planning for the inmate's release from

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<sup>14</sup> ICE has 24 field offices. IHRP cases are processed at nine field offices: (1) Los Angeles, California; (2) San Francisco, California; (3) Atlanta, Georgia; (4) New Orleans, Louisiana; (5) St. Paul, Minnesota; (6) Philadelphia, Pennsylvania; (7) Dallas, Texas; (8) El Paso, Texas; and (9) Seattle, Washington.

<sup>15</sup> [Appendix 7](#) contains a list of the immigration courts that process IHRP cases.

<sup>16</sup> During the hearing, the Immigration Judge explains to the inmate his or her rights, which include the right to retain an attorney, to request a continuance to better prepare for the hearing, and to petition the judge for asylum. If the inmate chooses to avail himself or herself of any of these rights, the judge may grant continuances to allow sufficient time to address each request until ultimately ruling on the inmate's removability from the United States and any pending petitions for asylum. If an inmate waives these rights, at the first hearing an Immigration Judge can make a final decision about whether to remove the inmate at the end of his or her sentence. For more information about EOIR's management of immigration cases, see DOJ OIG, [Management of Immigration Cases and Appeals by the Executive Office for Immigration Review](#), Evaluation and Inspections Report 13-01 (October 2012), [www.oig.justice.gov/reports/2012/e1301.pdf](http://www.oig.justice.gov/reports/2012/e1301.pdf).

<sup>17</sup> In order for ICE to deport a foreign-born national, including a BOP inmate in the IHRP, the foreign national's home country must issue travel documents to allow ICE to deport the individual. If ICE cannot deport a foreign-born national because a country refuses to issue travel documents, ICE releases the individual into the United States on an Order of Supervision and requires the individual to report to ICE periodically.

The BOP reported that, between FY 2018 and FY 2019, 3,636 IHRP inmates completed a sentence of incarceration and were held for ICE. The average number of days that those IHRP inmates waited for pickup was 0.89 days, and 98 percent of the inmates were picked up within 72 hours.

the BOP institution.<sup>18</sup> If the inmate has not completed the adjudication process prior to the end of his or her sentence, the inmate is transferred to ICE custody and remains in ICE detention pending completion of the removal proceedings. [Appendix 6](#) contains a flow chart that outlines the IHRP removal proceedings process.

According to the most recent Alien Incarceration Report, at the end of the of FY 2019 a total of 27,494 known or suspected noncitizens were in BOP custody.<sup>19</sup> Of the total number of known or suspected noncitizens in BOP custody as of September 30, 2019:

- 61.7 percent (16,970) had been ordered to be removed from the United States by an Immigration Judge after completion of their federal sentences;
- 13.2 percent (3,627) were undergoing removal proceedings in front of an Immigration Judge;
- 22.3 percent (6,120) were under investigation by ICE to determine whether the federal government could initiate removal proceedings; and
- the remaining 2.8 percent (777) had been granted relief or protection from removal and, therefore, would not be removed from the United States at the end of their federal sentences.<sup>20</sup>

All of the above-described inmates, except those still under ICE investigation, were IHRP inmates.

## Scope and Methodology of the OIG Review

The OIG examined the Department's planning and implementation of the IHRP expansion and modernization for inmates in BOP custody. Specifically, we assessed: (1) whether DOJ achieved the three goals of the expansion; (2) the steps DOJ took to coordinate with DHS to plan and implement the expansion; and (3) the direction and guidance DOJ provided to its components to expand the IHRP.

Our fieldwork, which we conducted from June 2018 through March 2019, included interviews of current and former DOJ and DHS officials, data collection and analyses, and document reviews.<sup>21</sup> We interviewed current and former BOP, EOIR, ICE, and USCIS officials who were involved in the planning or implementation of the IHRP expansion. To observe the structural and population-based characteristics and changes before and after the March 2017 expansion, we analyzed BOP foreign-born inmate data from FY 2013 through

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<sup>18</sup> A detainer is a mechanism used by ICE to request that a federal, state, or local law enforcement agency notify ICE before a removable noncitizen is released from criminal custody. The detainer also requests that the law enforcement agency notify ICE as early as practicable (at least 48 hours before release, if possible) and maintain custody of the noncitizen for a period not to exceed 48 hours to allow ICE to assume custody.

<sup>19</sup> DHS and DOJ, [Alien Incarceration Report, Fiscal Year 2019](#), 24, [www.justice.gov/archives/ag/page/file/1328326/download](http://www.justice.gov/archives/ag/page/file/1328326/download) (accessed June 24, 2021). President Trump's January 2017 Executive Order on Enhancing Public Safety in the Interior of the United States required DOJ and DHS to report quarterly on incarcerated noncitizens, including those in BOP custody.

<sup>20</sup> DHS and DOJ, [Alien Incarceration Report](#), 4.

<sup>21</sup> The OIG shifted resources to extensive pandemic-related oversight, including of the response by EOIR and the BOP to the pandemic beginning in March 2020, which delayed our completion and issuance of this report.

FY 2018 and EOIR IHRP case data from FY 2013 through the first 3 quarters of FY 2019. We also analyzed a dataset of ICE IHRP case data from FY 2013 through the first 3 quarters of FY 2019. We reviewed a sample of ODAG staff emails from January 1 through April 30, 2017, to understand DOJ leadership's role in developing and implementing the IHRP expansion. See [Appendix 1](#) for a more detailed description of the review's methodology.

## Results of the Review

### The Department Increased the Number of Federal IHRP Facilities, Enhanced VTC Capabilities at Federal IHRP Facilities, and Implemented Uniform Intake Policies

The OIG found that, since the March 2017 announcement, DOJ coordinated with DHS at both headquarters and field office levels to plan and implement the IHRP expansion and modernization. As a result, the IHRP now operates out of 17 BOP and contract prisons; all federal IHRP facilities have upgraded or new via video teleconference (VTC) equipment; and incoming federal inmates are classified in the IHRP in a centralized, consistent manner. In addition to working on the three goals of the IHRP expansion, in September 2020 the IHRP Working Group finalized a Memorandum of Understanding (MOU) to outline the roles and responsibilities of each agency in the IHRP.

While the OIG focused primarily on determining whether DOJ and DHS achieved the goals of the IHRP expansion (discussed below), we also assessed the IHRP expansion guidance and direction that the Department, the BOP, and EOIR provided to the components and field staff. We found that the Department, through the Office of the Deputy Attorney General (ODAG), provided sufficient high-level guidance and support to allow the components to accomplish the IHRP expansion. While ODAG left the details of implementing the expansion to the components via the IHRP Working Group, it worked closely with the components through in-person meetings and emails to provide input and guidance on the expansion as necessary.

Most of the staff we interviewed said that they considered the guidance they received from the BOP about the IHRP expansion to be sufficient, while a handful of BOP staff members told us that they would have liked additional direction about the new SENTRY codes/assignments for IHRP inmates.<sup>22</sup> The IHRP guidance document that the BOP provided us includes clear directions for finding information about whether an inmate is to be removed in a SENTRY field that includes information about detainers (for a list of IHRP SENTRY codes, see [Appendix 3](#)). Based on our review of BOP guidance documents and interviews with BOP staff involved in the IHRP, we concluded that the BOP sufficiently communicated the IHRP expansion and provided guidance to the field.

We determined that with just a few exceptions Court Administrators and Immigration Judges found that the guidance and information from EOIR was sufficient for them to fulfill their responsibilities. The guidance, which included both written documentation and in-person instruction, described how EOIR would be implementing the IHRP expansion and directed field staff on how to handle various functional and technological changes resulting from the expansion. Although not all EOIR immigration court staff received the same type or amount of guidance, we believe that the guidance provided was sufficient to assist EOIR staff responsible for both pre- and post-expansion federal IHRP facilities with carrying out the duties of the IHRP and the expansion.

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<sup>22</sup> The BOP issued an updated Program Statement for the IHRP, also known as a Change Notice, in 2017. BOP Program Statement 5111.04, CN-1.

## DOJ and DHS Expanded the Number of IHRP Facilities

The first goal listed in the March 2017 press release was to expand the number of active IHRP federal facilities to 20 (14 BOP prisons and 6 BOP contract prisons). Prior to the expansion, the program had 12 IHRP facilities (6 BOP prisons and 6 BOP contract prisons).<sup>23</sup> We found that the expansion initially added 8 additional BOP prisons and 1 additional BOP contract prison, for a total of 21 IHRP facilities. However, as of May 2021, the BOP reported that this number had been reduced to 17 IHRP facilities.<sup>24</sup>

In selecting the post-expansion IHRP facilities, the BOP consulted with EOIR and U.S. Immigration and Customs Enforcement (ICE), through the IHRP Working Group, to ensure that the program included:

- all types of federal prison security levels to accommodate the range of foreign national inmates' security classifications;
- both male and female facilities; and
- facilities in all areas of the United States, including the East and West Coasts and the Central region.

Additionally, the IHRP Working Group considered the following when selecting the new IHRP facilities:

- facilities that are within relatively close proximity to the associated ICE field office to reduce the distances ICE personnel would have to travel;
- facilities that have available space to conduct IHRP hearings, either in person or VTC; and
- the degree of difficulty in connecting new VTC wiring at each potential site.

The OIG determined that the IHRP facilities active at the time of our review were of different security levels, were spread across all of the geographic areas of the country, were both male and female institutions, and were within 1 hour driving time of the associated ICE field office. Additionally, each of the IHRP facilities received new or upgraded VTC equipment for two hearing rooms and all of the new facilities had available space and wiring to connect the equipment. The full list of pre- and post-expansion facilities is in [Appendix 4](#), and a map of the facilities is in [Appendix 8](#).

We asked the members of the IHRP Working Group who were involved in the expansion planning for their perspective on whether the initial 21 IHRP facilities was the appropriate number to address the capacity of the program. The BOP's Correctional Programs Branch (CPB) Administrator told the OIG that the 21 facilities constituted enough capacity for the number of IHRP inmates currently requiring hearings. We interviewed

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<sup>23</sup> Facilities that had the IHRP prior to the expansion are hereinafter referred to as "pre-expansion IHRP facilities," and facilities that added the IHRP as a result of the expansion are hereinafter referred to as "post-expansion IHRP facilities."

<sup>24</sup> The BOP reported that the Adams County Correctional Center in Mississippi, a pre-expansion IHRP facility, was no longer an IHRP facility after July 2019 because the contract was not renewed. In May 2021, the BOP also reported that it had ended contracts with four contract prisons that were IHRP facilities (three pre-expansion and one post-expansion) but the BOP was considering adding two BOP prisons as IHRP facilities.

the former Unit Chief of ICE's Criminal Alien Program, who told us that, from ICE's viewpoint, there would not be an operational benefit or need to add additional IHRP facilities. Both the CPB Administrator and the Unit Chief said that the agencies involved in the IHRP Working Group would decide whether additional capacity was needed for the IHRP. In May 2021, the OIG asked the BOP CPB Administrator whether the reduction in the number of IHRP facilities to 17 has affected the program. He said that it was too early to tell and, once the IHRP is operational at the two additional prisons the BOP was looking to add as IHRP sites, the BOP will complete an assessment to determine whether additional sites are needed.

We found that increasing the number of IHRP facilities from 12 to 21 (now 17) gave the BOP more flexibility regarding where to house foreign national inmates who require IHRP hearings. The CPB Administrator told us that, when assigning inmates to facilities, having additional IHRP facilities helps the BOP to more effectively manage available bed space, provide programming options for inmates, and mitigate the effects of inmate gang affiliations. We believe that the additional seven IHRP facilities may also have reduced the caseload of specific ICE field offices and EOIR immigration courts by spreading the cases across more locations around the country.

### **One Facility Had Not Held Any IHRP Hearings Because of an ICE Field Office's Resistance to Program Policy Changes**

We found that one of the post-expansion facilities, the Federal Correctional Institution (FCI) in Oakdale, Louisiana (Oakdale II), had not held any IHRP hearings because, according to BOP, EOIR, and ICE headquarters and field staff, the local ICE field office would not follow two program policy changes developed by the IHRP Working Group. Specifically, the IHRP policy changes included setting a target for ICE to initiate removal proceedings by filing Notices to Appear (NTA) with EOIR within 6–60 months of the inmate's earliest possible release date and requiring an ICE representative to be present at the BOP or contract facilities for IHRP hearings. The Oakdale ICE Assistant Field Office Director with responsibility for the Oakdale II facility at the time told us that he disagreed with the timeline for filing NTAs because he believed that ICE should be able to file them closer to the inmate's release date.<sup>25</sup> The ICE Assistant Field Office Director also said that he believed that sending ICE personnel to hearings was unnecessary and consumed time that could be used elsewhere.

We believe that filing an NTA with a short timeline could affect EOIR's ability to issue a decision before the end of the inmates' sentences and potentially result in Immigration Judges feeling pressure to complete the IHRP case faster to meet performance goals.<sup>26</sup> We have similar concerns about the possible absence of the Oakdale ICE officer in the hearing room in that the ICE officer is responsible for ensuring that any documents related to the immigration case are properly passed between the immigration court and the IHRP inmate and for explaining any immigration court documents to inmates. We believe that, if the ICE

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<sup>25</sup> The Federal Correctional Complex (FCC) Pollock IHRP facility is also under the responsibility of the Oakdale ICE field office but is overseen by an Assistant Field Office Director different from the Oakdale facility. The BOP told us that ICE personnel did not attend the first IHRP hearing held at FCC Pollock in March 2018 and started attending IHRP hearings at the facility only in July 2018. EOIR confirmed that cases at the facility were suspended for approximately 4 months because of the ICE field office's failure to attend.

<sup>26</sup> An individual Immigration Judge's performance is assessed, in part, based on whether IHRP cases are completed before the end of an inmate's sentence, regardless of when the NTA is filed. In addition, although IHRP cases are only a small part of EOIR's caseload, they can constitute a large percentage of the caseload of an individual judge.



officer is not present to handle the paperwork, cases could be delayed and questions of fairness about the proceedings could arise.<sup>27</sup>

The EOIR Deputy Chief Immigration Judge at the time told us that, to address the ICE field office leadership's concerns and to ensure that the agencies can collaborate effectively at each site, in early 2019 the IHRP Working Group modified the draft IHRP MOU to allow the Assistant Chief Immigration Judges (ACIJ) to modify the standard NTA timeline of 6–60 months as appropriate for the immigration court(s) they oversee. He said that the Oakdale ICE field office and the Oakdale immigration court came to an agreed timeline of filing an NTA within 4 months of the end of an inmate's sentence at FCI Oakdale II. While the timeline is shorter than the program standard, EOIR and the local immigration court agreed to try to work within this parameter. In May 2021, EOIR reported that the immigration court handling the Oakdale II IHRP cases was receiving a small number of NTAs from the ICE field office for Oakdale II IHRP inmates.

### **DOJ Updated the Existing VTC Infrastructure and Increased the Number of VTC Units at Each IHRP Facility**

The second goal of the IHRP expansion was for every IHRP facility (both pre- and post-expansion) to receive updated or new VTC equipment to conduct removal proceedings. As described in the text box below, we were told about concerns related to the use of VTCs in immigration hearings and technology problems that may affect immigrants' due process rights, primarily those involving non-IHRP hearings at DHS detention camps. The text box includes our analysis of the number of VTC malfunctions in federal IHRP immigration hearings. While the scope of this review did not include assessing the overall use of VTCs by EOIR in immigration hearings, or the potential effects of their use on due process rights, the OIG initiated a separate inspection and review of the use of VTCs in immigration hearings conducted in the DHS tent facilities at the United States/Mexico border.

We found that, with regard to the federal IHRP facilities, EOIR was responsible for purchasing and installing the VTC equipment and EOIR provided technical support for each unit. EOIR told the OIG that it purchased 40 new units at a cost of \$4,855 per system, for a total of \$194,200. The BOP was responsible for ensuring that each IHRP facility had the appropriate wiring to operate new or updated VTC equipment, as well as rooms available to conduct removal proceedings. The BOP is responsible for housing and protecting the VTC equipment inside each facility, and an ICE representative is typically in charge of operating the VTC equipment. According to the BOP and EOIR, as well as field staff we interviewed, each IHRP facility now has

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<sup>27</sup> Because our oversight jurisdiction is limited to DOJ programs and personnel, we did not review the impact of the ICE officer's presence in the hearing room.

2 VTC units, including 40 new units overall, to use for removal hearings, which should enable more flexibility in scheduling hearings and provide the capacity to hold additional hearings.<sup>28</sup>

The BOP, EOIR, and ICE staff we interviewed indicated that the new VTC equipment had improved the quality of the video proceedings and provided opportunities to conduct simultaneous hearings due to the second VTC-equipped hearing room, but we were also told that not all facilities were using both hearing rooms. For example, one IHRP location did not have enough IHRP inmates at the hearing stage of the program to warrant using two hearing rooms/VTCs and one location did not have enough ICE officers to staff both of the rooms during the hearings.

### DOJ and DHS Developed Two New Uniform Intake Policies

The third goal of the IHRP expansion was for EOIR and ICE to finalize a new and uniform IHRP intake policy. Our interviews with senior EOIR and ICE officials and our review of relevant DOJ emails showed that the IHRP agencies had implemented two different intake policies since March 2017 as part of the effort to improve the program. The first policy, which was announced in then Attorney General Sessions's press release, was intended to help EOIR more easily identify IHRP NTAs filed by ICE. The second policy, created after the announcement of the expansion, centralized and standardized the classification of IHRP inmates by an ICE liaison to the BOP when the inmates first enter into the BOP.

The first new intake policy created a process whereby ICE added an IHRP notation to NTAs to make it easier for EOIR to identify IHRP cases.<sup>29</sup> Specifically, EOIR's Deputy Chief Immigration Judge at the time stated that EOIR, ICE, and the then ICE liaison at the BOP Central Office met and decided to modify IHRP NTAs by including "IHP" and the inmate's estimated release date in the top corner and by ensuring that this process was uniformly and nationally followed. The Deputy Chief Immigration Judge told the OIG that he believes that this change was initiated in May 2017 and fully implemented by October 2017. Most of the Court

### VTC Technology Issues

During our review, we learned about an increasing number of complaints related to the use of VTCs in all types of immigration hearings. The VTC complaints primarily concerned non-IHRP hearings involving DHS detention camps. The complaints alleged that the use of VTCs restricted immigrants' access to their attorneys and translators, which could adversely affect their due process rights, and that VTC technology problems impact immigrants' rights to fair hearings.

These concerns appear generally to be focused on non-IHRP hearings and are not specifically directed at the federal IHRP hearings that were within the scope of this review. Nevertheless, we analyzed EOIR data to determine how often VTC technology problems or malfunctions caused a federal IHRP hearing to be adjourned. We determined that from FY 2013 through FY 2018:

- Seventy federal IHRP hearings were adjourned for video malfunctions during the 6 years of our study period. This represents slightly less than 1 percent (70 out of 9,672) of all immigration hearings for federal IHRP inmates, the vast majority of which were VTC hearings.
- Those 70 adjourned hearings were held by 7 different immigration courts for IHRP inmates at 9 BOP IHRP facilities. The hearings were held on 22 unique dates (courts can schedule numerous hearings on a single day).

A few Immigration Judges told us about technology issues with the older VTC equipment but said that they could usually solve problems that arose and that it did not affect their ability to process cases.

Source: OIG analysis of EOIR data and interviews

<sup>28</sup> EOIR told the OIG in May 2021 that the VTC units purchased for the four prisons that are no longer IHRP facilities were repurposed for use at other EOIR sites.

<sup>29</sup> As discussed in the [Introduction](#), an NTA is a written notice, served by ICE, for an inmate to appear at immigration proceedings. The notice describes the nature of the proceedings, the legal authority under which the proceedings are conducted, the acts or conduct alleged to be in violation of the law, and other relevant information.

Administrators we interviewed said that the notation is helpful and makes it easier to identify the IHRP NTAs, although some also said that the notation was not necessary because they could determine whether the NTA was for an IHRP inmate from other areas on the NTA, specifically the name of the facility. One Court Administrator told us that her immigration court was not receiving NTAs with an IHRP notation but that she was nevertheless able to identify the IHRP NTAs by the name of the facility.

The second new intake policy implemented a process that centralizes the assessment of BOP inmates to determine whether they should be designated as IHRP inmates. Specifically, under this process, the ICE liaison to the BOP assesses incoming BOP inmates and determines their citizenship and eligibility for IHRP and removal from the country, as we described in the [Introduction](#). The Unit Chief of ICE's Criminal Alien Program at the time told us that, prior to the initiation of this new centralized process, local ICE field offices assessed foreign-born inmates for IHRP eligibility and categorization and there were no standard or centralized processes for assessing and vetting those inmates. A BOP Case Management Coordinator told us that, under the prior process, her IHRP institution had sometimes received transfer inmates that had been designated as IHRP inmates by the local ICE field offices for their former, non-IHRP institutions, but that, when the ICE field office associated with her IHRP institution secondarily reviewed these inmates, it determined that some inmates were in fact not eligible for the IHRP. She stated that as a result these inmates had been unnecessarily transferred to that IHRP facility. The Case Management Coordinator stated that she has not experienced this problem since mid-2018.

BOP and ICE headquarters staff identified for us another benefit of the new intake policy. Specifically, the CPB Administrator during our review noted that prior to the new process it was challenging for the BOP to correctly identify and classify IHRP inmates. Previously, local ICE field offices determined a foreign-national federal inmate's IHRP designation and different ICE field offices may have different determinations, as described above. The new policy centralized and simplified that process because the ICE liaison determines each inmate's removability and whether he or she needs a hearing prior to the inmate's arrival at the prison. This should enable the BOP and individual prison facilities to manage IHRP inmates more consistently and efficiently.

### **The IHRP Working Group Finalized an IHRP MOU**

While developing an MOU for the IHRP was not one of the goals of the IHRP expansion, we found that the IHRP Working Group during the expansion created a draft MOU which provides the framework for the program's operations and finalized it in September 2020. We reviewed the IHRP MOU and found that it describes the roles and responsibilities of each agency (the BOP, EOIR, ICE, and U.S. Citizenship and Immigration Services (USCIS)) in the program, provides a mechanism for resolving disagreements between participating agencies, and establishes timelines and protocols for initiating the IHRP. During most of our fieldwork, because the MOU had not been finalized the participating agencies told the OIG that they were operating under the draft MOU's provisions and had directed field staff to follow its guidelines and procedures until the MOU was finalized. When we asked staff to describe and assess the guidance they received for the IHRP and the expansion, some pointed to the draft MOU and said that it was sufficient for them to work within the program. We found that the agencies involved in the IHRP were able to collaborate and coordinate effectively at the headquarters and field levels under the auspices of the draft MOU.

Now that the agencies have finalized the MOU, we believe that the MOU will reinforce the successful cooperation between the agencies participating in the IHRP and provide a basis for holding each agency accountable for fulfilling its role in the process. As we describe in more detail below, each agency has

competing priorities and other constraints, such as processing other types of immigration cases or maintaining prison security for all inmates. These issues make it challenging to work within the IHRP or for one agency to “own the program.” The MOU should assist with these challenges.

### **The IHRP MOU Addressed USCIS Requirements for Processing IHRP Inmates**

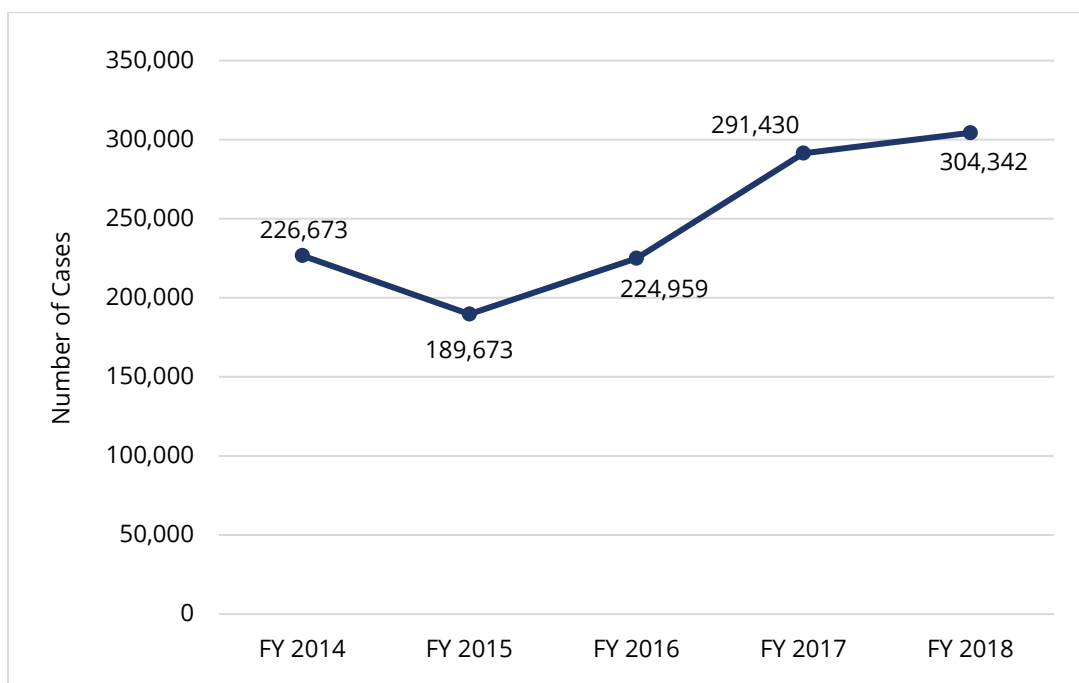
As discussed in the [Introduction](#), the USCIS’s role in IHRP cases is to interview inmates who request asylum because they claim fear of persecution or torture should they return to their country of birth. The EOIR Chief Deputy Immigration Judge told us that almost all IHRP inmates will file a claim of asylum, and therefore EOIR, the BOP, and ICE believed that it was important that the USCIS be a participant in the Working Group and be able to process asylum claims of IHRP inmates while they were still incarcerated in the BOP. While most IHRP inmates are not eligible for asylum because of their criminal conviction, the USCIS must process and make a decision on all credible and reasonable fear referrals. If the USCIS finds that the IHRP inmate does not have a credible or reasonable fear of persecution or torture, the inmate may request that an Immigration Judge review that negative determination. Prior to the IHRP expansion, the USCIS would conduct reasonable or credible fear interviews in a private setting once the inmates were in ICE detention. In March 2017, the USCIS joined the IHRP Working Group and explained the requirements for processing credible and reasonable fear referrals, which include conducting private interviews, allowing inmates to have an attorney or consultant present for interviews, and providing interpreters.

USCIS officials told us that they raised to the IHRP Working Group several concerns about the requirements for processing credible and reasonable fear cases. First, according to the USCIS Operations Branch Chief, conducting an interview when an inmate still has a year left on his or her sentence would be ineffective because conditions in the inmate’s country of origin could change prior to the conclusion of the inmate’s prison sentence. The IHRP Working Group agreed that the USCIS would interview the inmate toward the end of his or her sentence. Second, according to the USCIS, BOP facilities lack a private setting for reasonable or credible fear interviews. Additionally, USCIS officials said that USCIS field offices are often located far from prisons, making it impractical to interview the inmate in a USCIS field office. USCIS officials told us that they are exploring other options, such as conducting reasonable or credible fear interviews telephonically when a USCIS field office is not close to an IHRP facility. The IHRP MOU states that the BOP will provide space, separate from other detainees, for the USCIS to conduct credible fear and reasonable fear interviews at IHRP facilities. USCIS officials told us that the MOU fully addressed their concerns. As of May 2021, the USCIS reported that it had not yet received any credible or reasonable fear referrals for IHRP cases.

### **Increasing DHS Immigration Caseloads and BOP Staffing Challenges May Affect the IHRP’s Caseload**

EOIR’s statistical reports show a substantial increase in the number of NTAs filed with EOIR for removal in immigration cases in which DHS alleged that an individual was inadmissible to the United States, had entered the country illegally, or had entered the country legally but then violated one or more conditions of admission. The number of NTAs filed for these removal cases increased by 34 percent, from 226,673 to 304,342 cases, from FY 2014 through FY 2018. However, IHRP cases (federal, state, and local) represent a small number of all removal cases, only 0.9 percent in FY 2018, because the majority of removal cases involve foreign nationals who are not incarcerated in prison. Figure 1 below shows all new NTAs filed for EOIR’s removal cases.

**Figure 1**  
**Number of New EOIR Removal Cases, FY 2014–FY 2018**



Source: EOIR Statistics Yearbook, FY 2018

In its FY 2017 Annual Performance Report and FY 2019 Annual Performance Plan, the Department stated that EOIR’s ability to complete IHRP cases prior to the inmate’s release depends largely on DHS filing an NTA with sufficient time remaining in the inmate’s sentence for EOIR to complete the case. An EOIR headquarters official told us that ICE’s staffing issues can result in EOIR receiving the NTA less than 6–60 months before the end of the inmate’s sentence, as provided for in the established timeline.

We found specific instances in which the federal IHRP caseload was affected by competing immigration priorities. A Senior ICE official told us that ICE personnel find themselves pulled in different directions because of increasing responsibilities competing for priority. For example, according to the official, the focus on immigration enforcement at the Southwest border has strained ICE’s ability to focus on IHRP cases. Similarly, we heard from BOP, ICE, and EOIR staff that IHRP cases were suspended between June and November 2018 at Federal Correctional Complex Victorville because ICE was prioritizing cases involving detainees from the U.S. Southwest border.<sup>30</sup> Additionally, ICE staff from one field office told us that they

<sup>30</sup> In June 2018, ICE said that it was “working to meet the demand for additional immigration detention space” due to increased illegal border crossings and the Zero Tolerance Policy and was working with the BOP, among others, to meet this need. Sarah N. Lynch and Kristina Cooke, [“Exclusive: U.S. Sending 1,600 Immigration Detainees to Federal Prisons,”](https://www.reuters.com/article/us-usa-immigration-prisons-exclusive/exclusive-u-s-sending-1600-immigration-detainees-to-federal-prisons-idUSKCN1J32W1) *Reuters*, June 7, 2018, [www.reuters.com/article/us-usa-immigration-prisons-exclusive/exclusive-u-s-sending-1600-immigration-detainees-to-federal-prisons-idUSKCN1J32W1](https://www.reuters.com/article/us-usa-immigration-prisons-exclusive/exclusive-u-s-sending-1600-immigration-detainees-to-federal-prisons-idUSKCN1J32W1) (accessed September 16, 2021). At ICE’s request, EOIR suspended IHRP cases at FCC Victorville between June and November 2018 because ICE was prioritizing cases involving detainees from the U.S. Southwest border. The BOP informed us that the ICE detainees transferred out of Victorville in October 2018. EOIR informed us that FCC Victorville resumed processing IHRP cases in November 2018. The cases that started in November 2018 were outside the scope of our review.

were required to prioritize, over IHRP cases, the processing of non-IHRP cases involving inmates with impending release dates due to retroactively reduced sentences under the Fair Sentencing Act of 2010 (Pub. Law No. 111-220).

Staffing challenges at ICE field offices could affect future IHRP cases if non-IHRP cases with fast-approaching release dates are prioritized for processing. The Unit Chief of ICE's Criminal Alien Program at the time told us that for the IHRP to be successful ICE would need a team that worked on IHRP cases exclusively. (See the text box for an example of how ICE addressed caseload and staffing issues.)

In addition, we were given examples of BOP staffing challenges delaying IHRP proceedings due to security needs. For example, an Immigration Judge said that BOP staff in one IHRP facility often had to focus on other priorities, such as security incidents at the facility, which made it challenging for inmates to properly prepare for court and ultimately delayed IHRP proceedings. Separately, a Court Administrator said that staff at one of the BOP facilities she serviced cited the lack of Correctional Officers as the reason why the facility could not support IHRP hearings more than once a month.

#### **ICE Employed Surge Operations to Address Caseload and Staffing Issues**

In an attempt to mitigate caseload and staffing issues, ICE headquarters employed "surge operations," which consisted of a team of ICE personnel traveling to field offices to help work through case backlogs, including IHRP cases, for a certain period of time. During FY 2018, ICE conducted five surges at IHRP sites: Taft Correctional Institution in California; Federal Detention Center SeaTac in Washington State; FCI Pollock in Louisiana; D. Ray James Correctional Institution in Georgia; and FCI Big Spring (Flight Line Unit, Airpark Unit, and Cedar Hill Unit) in Texas. ICE planned five more surges for FY 2019 and planned some for IHRP sites.

The EOIR Deputy Chief Immigration Judge at the time told us that the immigration courts in the areas where surges occurred did see an increase in the number of IHRP NTAs filed immediately after the surge operations.

Source: OIG interviews

### **Although Neither DOJ nor DHS Has a Plan to Assess the IHRP Expansion, OIG Data Analysis Indicates that IHRP Participants Are Spending Less Time in ICE Detention**

The DOJ and DHS agencies involved in the IHRP each independently collect data related to the IHRP, but we found that they do not have a plan to jointly establish performance metrics and evaluate the IHRP expansion or the program itself. Despite this lack of complete performance data to enable a reliable program assessment, the OIG conducted its own analysis of existing data and found that the expansion appears to be lessening the time IHRP participants spend in ICE detention, resulting in cost savings for the government.<sup>31</sup>

The goal of the IHRP is that inmates will receive a final decision, or final order (e.g., removal, relief, voluntary departure), before the end of their prison sentence. Accordingly, for the purposes of our data analysis, we used the number of IHRP cases that were completed before the end of the inmates' sentences as an indicator of the potential success of the IHRP and its expansion. Using this metric, we identified a decrease in the number of days an IHRP participant spends in ICE custody when the final decision was made while in BOP custody and, therefore, less money spent on ICE detention.

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<sup>31</sup> We use the term "IHRP participant" to refer to IHRP inmates transferred to ICE detention.



## DOJ and DHS Do Not Have Plans to Separately or Jointly Evaluate the IHRP Expansion

Though both EOIR and ICE separately track elements of IHRP case data, including the date that IHRP inmates receive a final order or decision, we found that there is no collective dataset containing information needed to analyze the success of the IHRP and its expansion. EOIR provides information about its IHRP cases in its publicly available statistical reports, but it reports only the total number of new cases received and cases completed by decision. ICE does not have public reports that separate the number of IHRP removals from the number of all removals. Moreover, the BOP does not track data on IHRP inmates' removal cases. The BOP's data on IHRP inmates contains demographic information such as the facility or facilities in which the inmate has been housed, the date the inmate was placed in an IHRP facility, the inmate's projected release date, and the inmate's nationality. This information is necessary for the BOP to carry out its role of housing and managing IHRP inmates, but the nature of this data does not allow it alone to be used to assess the IHRP expansion.

The OIG attempted to use EOIR data to assess the effect, if any, of the IHRP expansion. However, we found anomalies in the EOIR dataset and we determined that we could not reliably use the EOIR case data.<sup>32</sup> ICE officials were able to provide the OIG with data on IHRP cases for FY 2013 through the first 3 quarters of FY 2019.<sup>33</sup> We could then determine whether the IHRP inmates received a final order before the end of their prison sentence, the number of days IHRP participants spent in ICE detention, and the average cost of ICE detention associated with those IHRP cases.

We analyzed an ICE dataset composed of a total of 4,022 federal IHRP cases that were opened or closed from FY 2013 through FY 2019 and for which we could verify the status or outcome of the case in our EOIR and BOP datasets. Of those 4,022 cases:

- 3,079 resulted in an order of removal, and the foreign national was removed;
- 1 resulted in an order of "relief granted" to the foreign national;
- 1 resulted in the foreign national agreeing to voluntarily depart the United States upon completion of his or her sentence;
- 35 ended in administrative closure or termination; and
- 906 were still open as of June 26, 2019. Of these cases:

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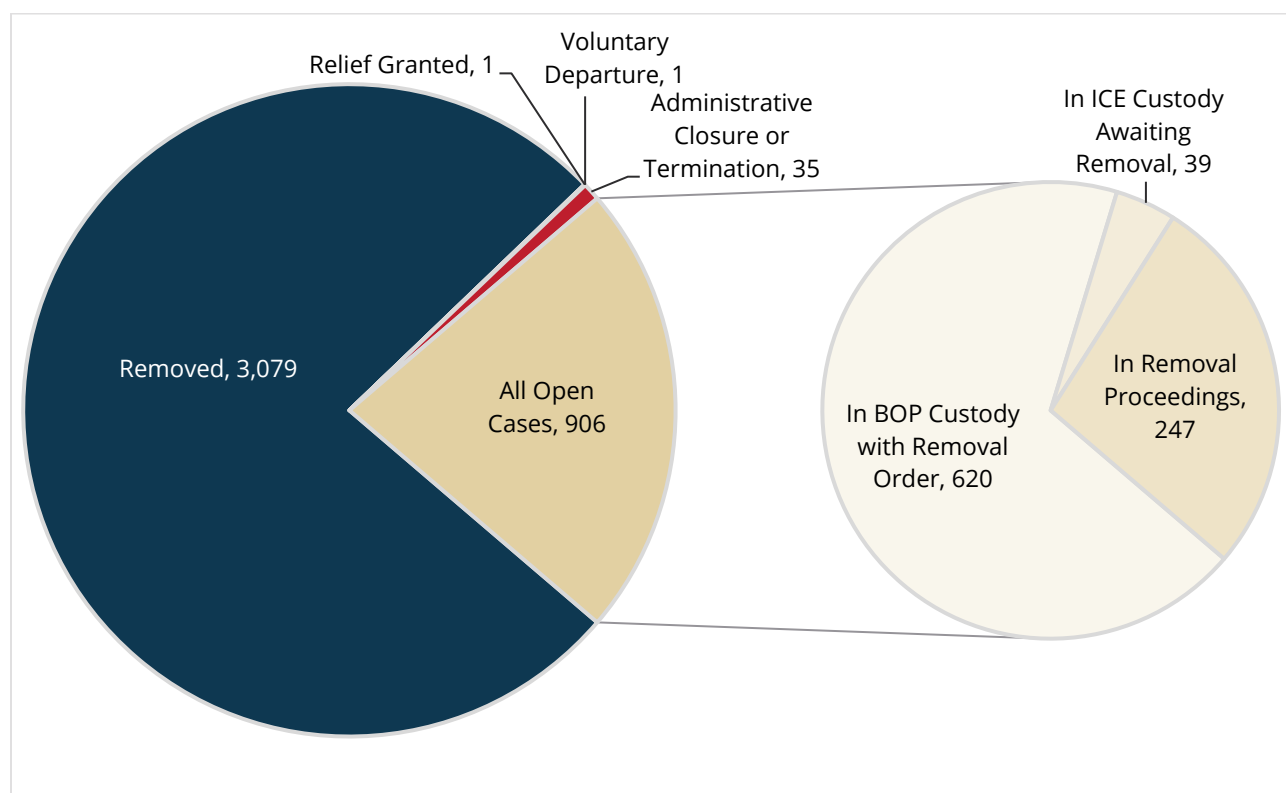
<sup>32</sup> See [Appendix 1](#) for additional information on the anomalies. We concluded that it would be extremely labor intensive to clean and reliably analyze the EOIR dataset to determine the number of IHRP inmates who received a final order before the end of their BOP sentence. After ICE officials told the OIG that they could provide us with similar data on IHRP cases to help make the same determination, we opted to use ICE data for our analysis.

<sup>33</sup> The ICE data included only the final order date, the date IHRP participants entered an ICE detention facility, and the dates the IHRP participants left the ICE detention facility to be deported. ICE also provided us with the actual average daily adult bed cost for their detention facilities. However, this average daily adult bed cost was for all types of ICE detention facilities, not the costs specific to IHRP participants or detaining IHRP participants.

- 247 were still in removal proceedings,
- 620 had a final order of removal but were still in BOP custody serving their prison sentence, and
- 39 had a final order of removal and were in ICE detention awaiting removal from the United States.<sup>34</sup>

Figure 2 shows the status of the 4,022 federal cases in the dataset.

**Figure 2**  
**Status of Open and Closed Federal IHRP Cases, FY 2013–FY 2019**



Note: FY 2019 includes data for the first 3 quarters only.

Source: OIG analysis of ICE IHRP case data

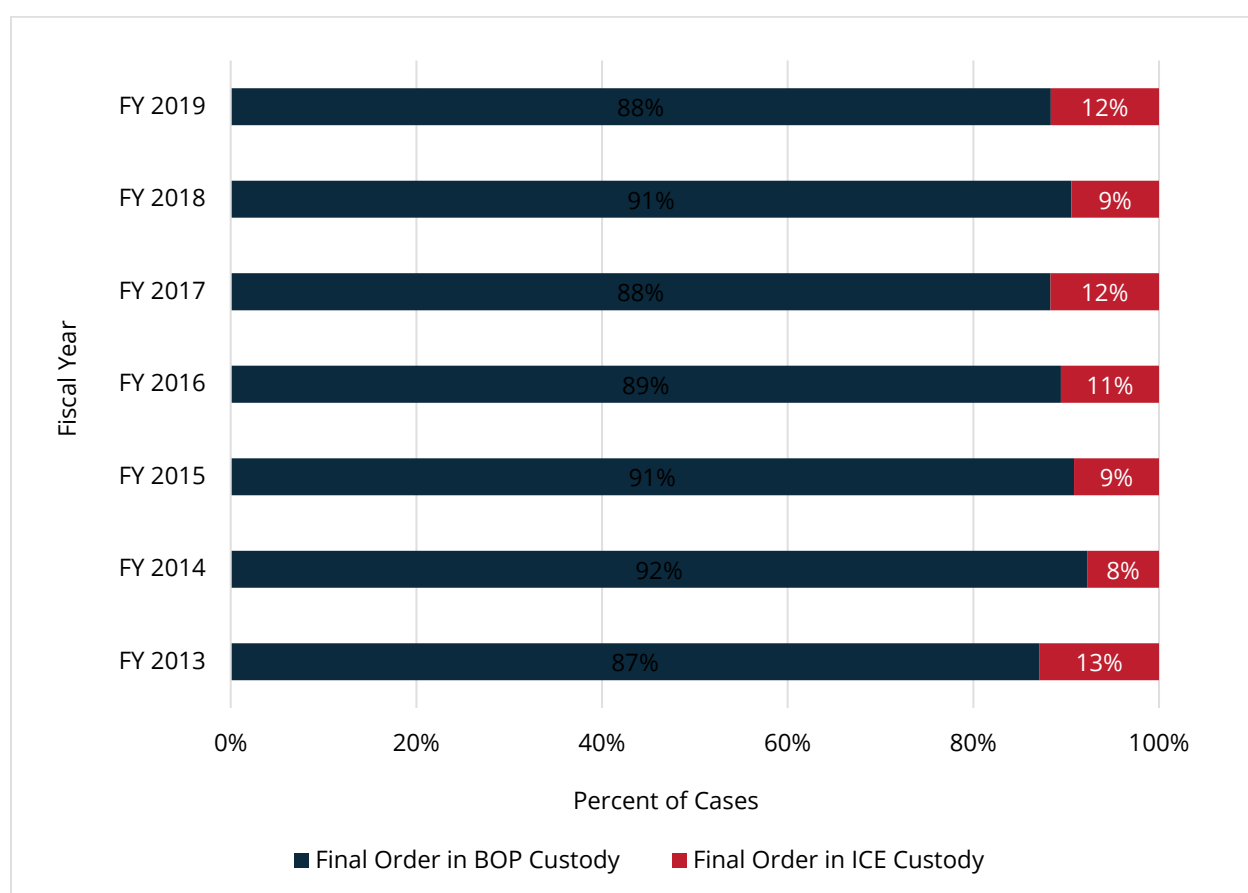
All of the analyses presented in the following sections were conducted on the 3,081 closed cases and do not include cases that were administratively closed or terminated.

<sup>34</sup> "Relief granted" means that the IHRP inmate was granted relief from removal, such as adjustment to permanent resident status or cancelation of removal, or was granted asylum or another form of protection relief. Some cases that are closed with administrative closure or termination can be reopened later under a different case number, and the ICE dataset did not include information regarding the outcome of these cases. Therefore, we could not use the administrative closure or termination cases in our analysis.

## IHRP Participants Spent Less Time in ICE Detention

The OIG found that the number of IHRP cases with a final order before the end of the inmate's BOP sentence as a percentage of the total number of IHRP cases did not change significantly over our study period, FY 2013 to FY 2019. The percentage of cases that were completed when the IHRP participant was still in BOP custody varied between 8 percent and 13 percent over the 7 years. In our dataset, 2,756 (89 percent) of the cases had a final order when the IHRP participant was in BOP custody and 325 (11 percent) of the cases had a final order when the IHRP participant had moved into ICE custody. Figure 3 shows the percent of IHRP cases with a final order before and after transfer to ICE detention in each fiscal year.

**Figure 3**  
**Percent of Federal IHRP Cases, by Time of Final Order and Fiscal Year**



Notes: FY 2019 includes data for the first 3 quarters only. As discussed in the [Introduction](#), in March 2017 the Attorney General announced the expansion of the IHRP.

Source: OIG analysis of ICE IHRP case data

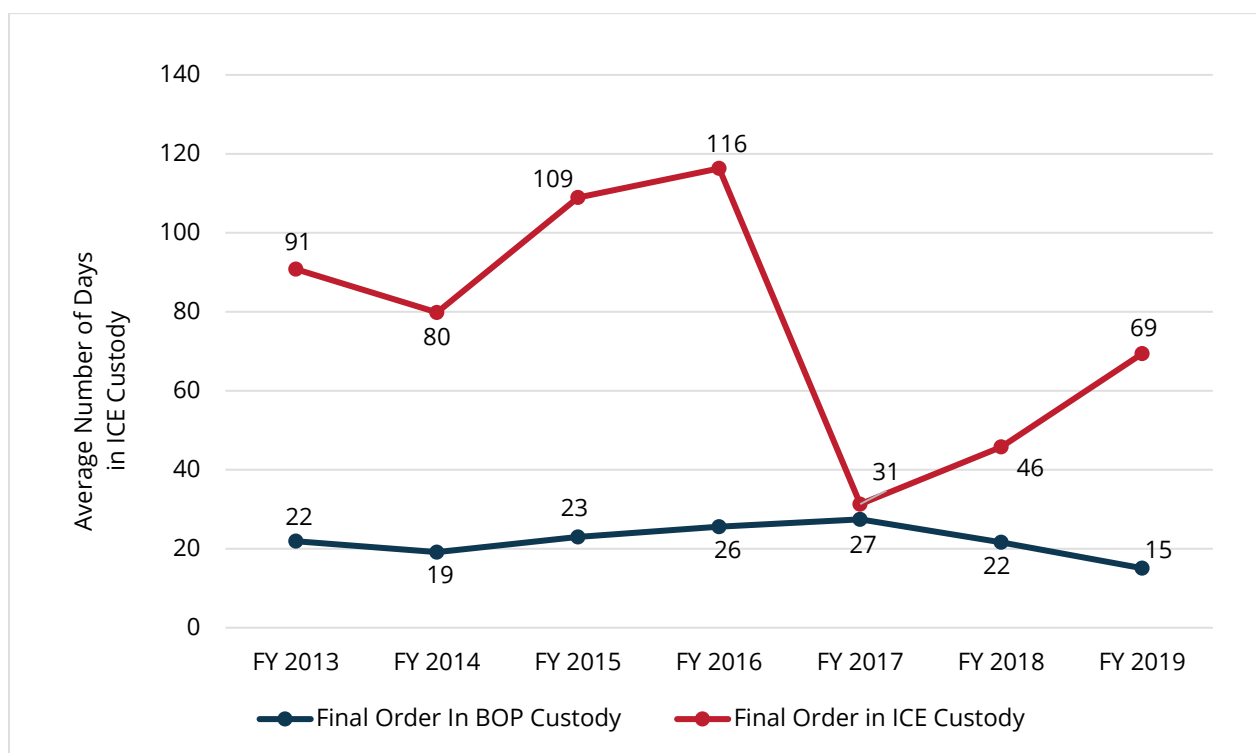
However, the OIG found that federal IHRP inmates who received a final order before the end of their prison sentence spent considerably less time in ICE detention than those whose final order was decided after they completed their sentence. Additionally, the average number of days IHRP inmates who received a final order before the end of their prison sentence spent in ICE custody has been decreasing since FY 2017. Between FY 2013 and the first 3 quarters of FY 2019:

- federal IHRP inmates who had a final order before entering ICE detention spent an average of 23 days in ICE detention, and
- if a federal IHRP inmate did not have a final order before the end of his or her sentence, the number of days in ICE detention increased to an average of 89 days.

Figure 4 shows the average number of days federal IHRP inmates spent in ICE detention according to the time the final order was issued.

**Figure 4**

**Average Number of Days in ICE Detention, by Time of Final Order and Fiscal Year**



Note: FY 2019 includes data for the first 3 quarters only.

Source: OIG analysis of ICE IHRP case data

When we analyzed this data by ranges, we found:

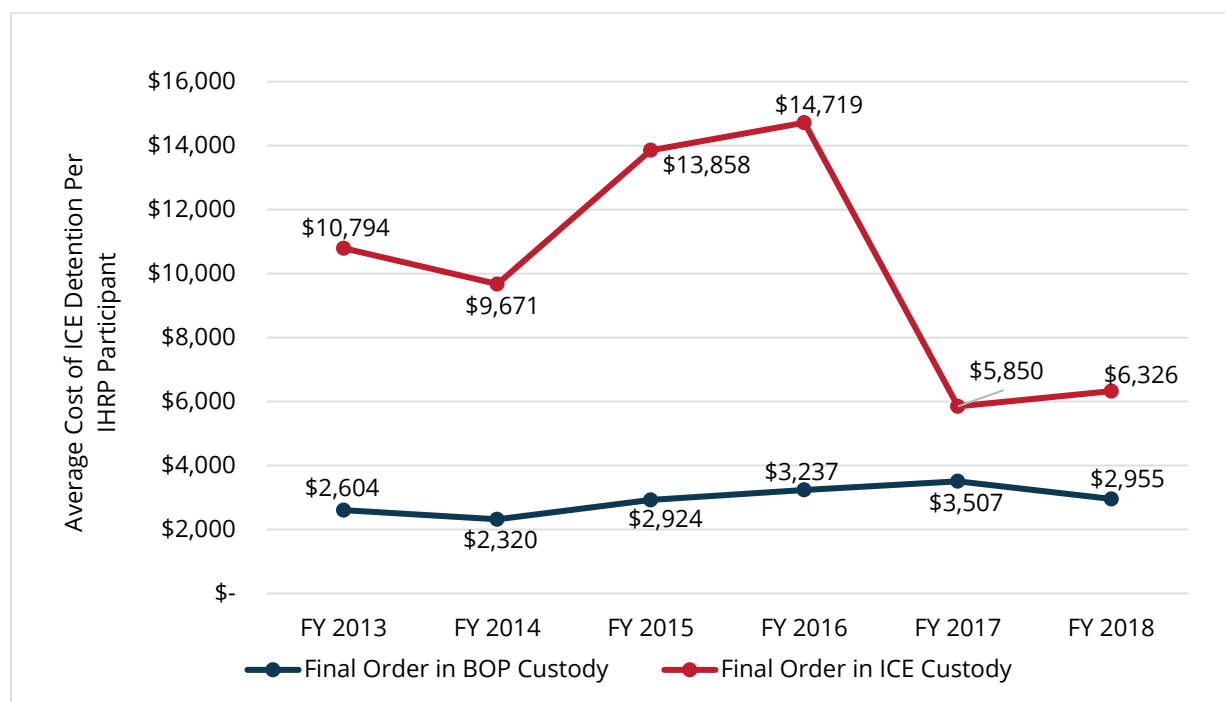
- Twenty-five percent of federal IHRP participants who received a final order before the end of their prison sentence were out of ICE detention in 1 day.
- Almost 50 percent of the federal IHRP participants who received a final order before the end of their prison sentence were out of ICE detention within a week.

- Sixty-six percent of the federal IHRP participants who received a final order before the end of their prison sentence were out of ICE detention within a month.
- By contrast, only 29 percent of the federal IHRP participants who received a final order after entering ICE detention were out within a month.

### ICE Detention Costs per IHRP Participant Decreased in FY 2018

We found that the average amount ICE spent to detain federal IHRP participants in ICE custody decreased in FY 2018 if a final order was issued before the IHRP inmate was released from BOP custody.<sup>35</sup> Figure 5 shows the average cost of ICE detention per IHRP participant for each type of case in our dataset, for each fiscal year.

**Figure 5**  
Average Cost of ICE Detention for Each Federal IHRP Participant,  
by Time of Final Order and Fiscal Year



Source: OIG analysis of ICE data

<sup>35</sup> ICE provided the OIG with actual daily adult bed cost for each quarter, FY 2015 through FY 2018, which we averaged for each of the 4 years. For FY 2013 and FY 2014, we used the actual daily adult bed cost as listed in the ICE Congressional Budget Overview for FY 2018. (However, in FY 2019, ICE realigned service-wide costs and moved them to the Mission Support base funding. According to ICE, the daily adult bed cost no longer includes these operational enterprise costs and was reduced. We did not calculate the costs for the FY 2019 cases because we could not compare the costs equally.) We then used these daily bed costs to estimate the cost for ICE to detain the IHRP participants. ICE, [Budget Overview, FY 2019](#), 24, [www.dhs.gov/sites/default/files/publications/U.S.%20Immigration%20and%20Customs%20Enforcement.pdf](http://www.dhs.gov/sites/default/files/publications/U.S.%20Immigration%20and%20Customs%20Enforcement.pdf), and [Budget Overview, FY 2018](#), 14, [www.dhs.gov/sites/default/files/publications/ICE%20FY18%20Budget.pdf](http://www.dhs.gov/sites/default/files/publications/ICE%20FY18%20Budget.pdf) (both accessed September 16, 2021).

Because the IHRP participants who received a final order after they entered ICE detention stayed in ICE detention longer than those who received a final order while still incarcerated by the BOP, the associated costs were higher—more than double the costs in every fiscal year except FY 2017.

The OIG cannot definitively state with specificity the degree to which the IHRP or its expansion contributed to IHRP participants spending less time in ICE detention and the resulting reduction in costs in FY 2018 because other variables could have affected the data points we assessed. Variables such as the number of Immigration Judges at the IHRP sites or whether an IHRP participant appeals the removal decision may impact the length of time it takes to complete removal proceedings.<sup>36</sup> It is also likely that some benefits of the program expansion will not be measured for a period of months or years. For example, those foreign-national federal inmates serving very long prison sentences may not yet have started the IHRP process because they are not within 60 months of completing their prison sentence or they have received final orders through the IHRP but have not left BOP custody because they have many months remaining in their prison sentence.

While the OIG cannot determine with specificity the cost savings associated with the IHRP expansion, the results suggest that it has resulted in savings to ICE. We believe that the agencies involved in the IHRP should work together to develop performance measures and consistently collect the appropriate data to fully assess the effect of the IHRP expansion, as well as the program itself. In addition, the IHRP MOU does not include any procedure, or assign responsibilities related to, collecting, sharing, or analyzing data to evaluate the program's or the expansion's performance. Accordingly, the IHRP agencies should work together to identify each agency's role and responsibilities related to data collection, reporting, and evaluation.

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<sup>36</sup> Other possible variables include the location of the IHRP facility, ICE field office, or immigration court (resources could vary across the locations and contribute to increased case processing times); whether ICE deployed a "surge operation" in that IHRP site (locations with surge operations may have processed cases faster); how close the IHRP inmates were to the end of their sentence (the agencies have a shorter time to complete removal proceedings and may not complete them before the end of an inmate's sentence); and whether the inmate's country of origin has a treaty with the United States to accept the inmate back after removal (IHRP participants whose country of origin does not have a treaty with the United States may spend more time in ICE custody awaiting deportation). For more information on the last variable, see DOJ OIG, [Status Review on the Department's International Prisoner Transfer Program](#), Evaluation and Inspections Report 15-07 (August 2015), [www.oig.justice.gov/reports/2015/e1507.pdf](http://www.oig.justice.gov/reports/2015/e1507.pdf).



## Conclusion and Recommendation

### Conclusion

As part of its broader effort to advance immigration-related initiatives, the Department announced an expansion of the IHRP in March 2017 and established three goals: (1) expand the number of federal IHRP facilities, (2) update existing VTC infrastructure and increase the number of VTC units, and (3) develop a new uniform intake policy. We found that DOJ and its components involved in the IHRP were able to achieve these three goals. The IHRP is now operating out of 17 BOP facilities, each IHRP facility has updated or new VTC equipment, and the program has 2 new intake policies that help the program's efficiency and standardization. Further, the IHRP Working Group finalized a draft Memorandum of Understanding formalizing each agency's responsibilities and authorities, as well as program guidelines and procedures.

We found that DOJ coordinated with DHS to achieve the goals of the IHRP expansion, except in one site.<sup>37</sup> We also found that DOJ worked closely with its components involved in the IHRP and provided sufficient support to kick off the expansion while entrusting to the components in the IHRP Working Group the specifics of implementing the expansion. BOP and EOIR headquarters and field staff believed that the IHRP guidance and direction from the Department and component headquarters were sufficient.

We also identified a number of challenges that DOJ and DHS faced while expanding the IHRP that might affect the IHRP's efficiency and success in the future, such as limited BOP and ICE staffing; increasing immigration caseloads and ongoing inmate security considerations. In order for DOJ and DHS to determine how to address these challenges, their components involved in the IHRP must continue coordinating and collaborating.

Finally, we found that the DOJ and DHS agencies involved in the IHRP do not have an evaluation plan or performance metrics for the program or its expansion. Though both EOIR and ICE separately track elements of IHRP cases for their own performance reports, there is no collective dataset containing all of the information needed to assess the program. The OIG analyzed ICE and EOIR IHRP datasets, and our results identified a decrease in the average cost for IHRP participants in ICE custody for cases in which the final decision was made when the participant was in BOP custody. In response to a working draft of this report, ICE officials told the OIG that they support ongoing meetings to assess current operations and ways to improve the program's effectiveness and that these efforts align with Executive Order 13993 to protect national and border security, address the humanitarian challenges at the southern border, and ensure public health and safety.<sup>38</sup>

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<sup>37</sup> As discussed in the [Results of the Review](#), the local ICE field office for Federal Correctional Institution Oakdale II did not agree with program requirements that established when to initiate removal proceedings for IHRP inmates and that directed ICE to have a representative at the IHRP hearings.

<sup>38</sup> Executive Order 13993, Revision of Civil Immigration Enforcement Policies and Priorities, January 20, 2021.

## Recommendation

We believe that agencies participating in the IHRP should determine how the IHRP expansion and the program itself should be evaluated. While each agency may be collecting and analyzing data related to the IHRP separately, there is no plan to collaborate and jointly assess the program. Therefore, we recommend that the BOP and EOIR work with ICE and the USCIS to:

1. Develop performance metrics to assess the effect of the Institutional Hearing and Removal Program expansion and assess the program itself, including the roles and responsibilities each agency will have related to performance metrics, data collection, and evaluation.

# Appendix 1: Purpose, Scope, and Methodology

## Standards

The OIG conducted this review in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation* (January 2012).

## Purpose and Scope

The OIG conducted a targeted review of DOJ's role in the IHRP expansion. Our review included the following objectives:

- Assess the expansion of the IHRP to determine whether DOJ achieved the three goals listed in the Attorney General's press release.
- Determine and assess the steps DOJ took to coordinate with DHS in the expansion of the IHRP.
- Determine and assess the direction and guidance that DOJ provided to expand the IHRP.

## Interviews

We interviewed 16 DOJ and DHS component headquarters staff who had been previously or were associated with the IHRP at the time of our review. We conducted these interviews to gain a better understanding of each agency's roles and responsibilities in planning, developing, coordinating, implementing, and overseeing the IHRP expansion. These interviews included current and former staff of the following agencies:

- the Office of the Deputy Attorney General (ODAG),
- the BOP,
- EOIR,
- ICE, and
- U.S. Citizenship and Immigration Services (USCIS).

We also conducted interviews with 37 BOP, EOIR, and ICE field staff who work with the IHRP at five sites: (1) Allenwood, Pennsylvania; (2) Dallas, Texas; (3) Los Angeles, California; (4) San Francisco, California; and (5) Oakdale, Louisiana.<sup>39</sup> We chose the five sites based on a series of factors, including: pre- or post-

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<sup>39</sup> Each of our sites included a BOP IHRP facility or facilities, the EOIR immigration court with responsibility for IHRP cases at the BOP IHRP facility or facilities, and the ICE field office with responsibility for the IHRP cases in those BOP IHRP facility or facilities. At the time of our fieldwork, the USCIS did not have field staff working with the IHRP.

expansion IHRP facilities, BOP or contract prison facilities, number of IHRP inmates, and number of facilities covered by a single immigration court. Table 1 lists the agency and position type of all 37 field interviewees.

**Table 1**

**OIG Field Interviewees by Agency and Position Type**

Agency	Position Type	Number of Interviewees
<b>BOP</b>	Case Management Coordinator	11
	Complex Case Management Coordinator	1
	Associate Warden	1
	IHRP Assistant	1
	Unit Manager	1
<b>EOIR</b>	Immigration Judge	8
	Court Administrator	5
<b>ICE</b>	Supervisory Detention and Deportation Officer	5
	Assistant Field Office Director	3
	Deportation Officer	1
<b>Total</b>		<b>37</b>

Source: OIG records

The OIG conducted follow-up interviews with the points of contact for the IHRP at each of the participating agencies, the BOP, EOIR, ICE, and the USCIS, in April and May 2021, to obtain updates about the program after OIG resources had been diverted to pandemic-related work.

## Data Analysis

We analyzed three datasets for the review: BOP SENTRY data from FY 2013 through FY 2018 and EOIR IHRP case data and ICE IHRP data from FY 2013 through the first 3 quarters of FY 2019. The purpose of our BOP and EOIR data analysis was to provide insight into the make-up of the IHRP population and how the IHRP cases proceeded through the immigration courts during our review period. Our analysis of the ICE dataset was to determine whether IHRP participants received a final order before the end of their prison sentence and the number of days they spent in ICE detention.

The BOP SENTRY dataset consisted of “snapshots” of the IHRP inmate population at the end of each fiscal year from FY 2013 through FY 2018. The dataset included fields such as the inmate’s security level, country of citizenship, and location or facility. We analyzed a total of 222,063 IHRP cases.<sup>40</sup> The total number of IHRP

<sup>40</sup> There were 222,072 IHRP cases during our review period, but we removed 9 of them because the BOP was unable to tell us what their IHRP SENTRY assignments/codes signified.

cases across all fiscal years is not equal to the number of IHRP inmates across all years because many inmates were incarcerated during more than 1 fiscal year and we counted each inmate only once per fiscal year.

Our primary analysis of the EOIR case data pertaining to IHRP cases identified the number of cases opened by EOIR from FY 2013 through FY 2018 and the number of cases in which an EOIR Immigration or Appellate Judge rendered a decision of removal, relief, voluntary departure, termination, or other.<sup>41</sup> EOIR provided data from FY 2013 through the first 3 quarters of FY 2019 pertaining to all active IHRP cases and included information such as case number; inmate name; inmate alien identification number; date the case was opened; date an Immigration Judge rendered a decision; the decision; and related appeals, if any. As advised by EOIR, we removed 266 cases from our analysis because 191 cases were not IHRP cases and 75 cases involved proceedings unrelated to the IHRP process.<sup>42</sup> We removed an additional 81 cases because proceedings associated with those cases included more than one federal, state, or municipal IHRP value, therefore the cases could not be singly grouped into one of these categories.

The OIG requested assistance from EOIR to ensure that our methodology for identifying the point at which a case transitions from IHRP to non-IHRP (when the IHRP inmate transfers from BOP custody to ICE detention) was accurate. EOIR said that this transition can be observed in two data fields in EOIR's case management system: "Hearing Location," or origin facility, and "Transfer To," or destination. However, when we conducted the preliminary analysis, we noticed anomalies with the destination data field contents for some cases. We determined that, using the EOIR dataset, it would be extremely labor intensive to analyze the data to determine the number of IHRP inmates that had a final order or decision before the end of their sentence and entered ICE detention. Specifically, the potential discrepancies in the EOIR data appeared to result in missing transfer orders or cases in which inmates appear to have been transferred between non-IHRP and IHRP facilities multiple times. As a result, the OIG raised this concern with EOIR.

EOIR responded that the destination data point could represent a specific facility or the immigration court of jurisdiction, which may be composed of multiple IHRP and non-IHRP facilities. The destination data point in the system is represented by a three-letter code used by EOIR to identify facilities, but EOIR also uses three-letter codes to identify immigration courts. We identified 66 codes that could be either an immigration court or a specific facility, potentially affecting 16 percent of the federal cases in the EOIR dataset. EOIR confirmed to the OIG that, if a proceeding in its dataset included a federal, state, or municipal IHRP value, the vast majority (94 percent) of the IHRP values accurately reflected the proceeding's IHRP status at that time. In addition, the absence of an IHRP value would provide a similarly accurate indication that the proceeding was not an IHRP case at that point in time. To address this issue, EOIR informed us that it is developing a new methodology for calculating its quarterly performance reports that does not utilize data from the destination data point. In October 2019, EOIR told us that the new methodology will be used for the next quarterly performance report, in FY 2020.

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<sup>41</sup> EOIR uses these five categories of decisions in its annual Statistics Yearbooks to report the number of completed IHRP cases.

<sup>42</sup> EOIR advised us to remove any proceedings involving a "zero bond" decision (to consider releasing a noncitizen upon the payment of a bond) by an Immigration Judge because these proceedings are separate from removal proceedings. In 75 instances, the proceeding with a zero bond decision was the only proceeding that represented the case in the dataset.

The OIG provided ICE a list of alien numbers and IHRP inmate names from the EOIR dataset for FY 2013 through the first 3 quarters of FY 2019. ICE provided the OIG with a dataset that included the alien number, IHRP inmate name, IHRP facility, final order date, “book in” date, and “book out” date. The OIG cleaned the data, deleted duplicates, and verified the final order dates with our EOIR dataset and BOP data. The dataset included a total of 4,022 IHRP participants.

## **Policy and Document Review**

We reviewed legislation, laws, and regulations related to the IHRP and immigration, as well as BOP and EOIR policy, procedures, and guidance related to the IHRP from its inception through the expansion. We reviewed DOJ and DHS memoranda, press releases, and other documents related to the expansion. We reviewed Alien Incarceration Reports (reports issued jointly by DOJ and DHS). We also reviewed past and current iterations of the Memorandum of Understanding between the BOP, EOIR, ICE, and the USCIS, which outlines each agency’s role in the IHRP.

## **Email Review**

To augment the information we obtained in interviews with current and former ODAG staff, ODAG staff suggested that we review their emails prior to and through the time of the announcement of the IHRP expansion. Our search parameters included all email and calendar data from January 1 through April 30, 2017, from the accounts of 12 ODAG and Office of the Attorney General employees. To increase the likelihood of receiving records that were relevant to this report, we reviewed records that included 1 or more of 24 IHRP-related key words. This data gave us specific information about when ODAG and the Office of the Attorney General became involved in the expansion, the officials from these offices that were involved, and the extent to which they were involved.



## Appendix 2: IHRP Expansion Press Release

### JUSTICE NEWS

Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

Thursday, March 30, 2017

### **Attorney General Sessions Announces Expansion and Modernization of Program to Deport Criminal Aliens Housed in Federal Correctional Facilities**

Attorney General Jeff Sessions today announced the expansion and modernization of the Department's Institutional Hearing Program (IHP).

The IHP identifies removable criminal aliens who are inmates in federal correctional facilities, provides in-person and video teleconference (VTC) immigration removal proceedings, and removes the alien upon completion of sentence, rather than releasing the alien to an ICE detention facility or into the community for adjudication of status. Bringing an Immigration Judge to the inmate for a determination of removability, rather than vice versa, saves time and resources and speeds hearings.

The program is coordinated by the Department of Justice's Executive Office for Immigration Review (EOIR), the Bureau of Prisons (BOP) and Immigration and Customs Enforcement (ICE).

"We owe it to the American people to ensure that illegal aliens who have been convicted of crimes and are serving time in our federal prisons are expeditiously removed from our country as the law requires," said Attorney General Sessions. "This expansion and modernization of the Institutional Hearing Program gives us the tools to continue making Americans safe again in their communities."

The expansion and modernization of the IHP program will occur in the following three ways:

1. ICE, BOP, and EOIR will expand the number of active facilities with the program to a total of 14 BOP and 6 BOP contract facilities;
2. EOIR and BOP will increase each facility's VTC capabilities and update existing infrastructure to aid in the ability to conduct removal proceedings; and
3. EOIR and ICE will finalize a new and uniform intake policy. EOIR and ICE expect to have reached agreement on this new intake process by April 6, 2017.

These improvements will speed the process of deporting incarcerated criminal aliens and will reduce costs to taxpayers.

**Component(s):**  
Office of the Attorney General

**Press Release Number:**  
17-340

*Updated March 30, 2017*

## Appendix 3: BOP IHRP Guidance with Updated IHRP Assignments for SENTRY

### IHP Guidance

#### Definitions:

**IHP PEND** – This assignment applies only to inmates who have been determined by ICE to require an IHP hearing before an Administrative Judge and are not currently at a hearing site.

**IHP PART** – This assignment applies only to inmates who require an IHP hearing, as determined by ICE, and are at an active IHP hearing site.

**IHP COMPLT** – This assignment applies only to inmates who have completed an IHP Hearing, and an Administrative Judge made a determination. The decision to deport or not deport has no impact on an assignment of IHP COMPLT, as DETN Y/N will denote this decision. All inmates who participate in and complete an administrative hearing at an IHP site will have a CMA assignment of IHP COMPLT.

**NO IHP HRG** – This assignment applies to inmates do not require an IHP hearing, as determined by ICE. This also applies if a deportation order from ICE exists, or if ICE has determined the inmate will not be deported.

**IHP INTRVW** – Applies to inmates who need to be interviewed by ICE for a hearing determination. If the inmate's immigration status is unknown, this assignment applies. Inmates with an ICE Detainer or Notify order not indicating a final order of removal should be placed in this assignment.

The signature authority (the entity making the final determination of deportation), despite whether the inmate will be removed, determines the IHP assignment.

- If the signature authority is ICE, **NO IHP HRG** is the only applicable CMA assignment.
- If an immigration/administrative judge is/will be the final authority, CMA assignments of **IHP PEND**, **IHP PART**, and **IHP COMPLT** may apply.
- **IHP INTRVW** is considered a short-term assignment, and should be changed upon receipt of disposition following the ICE interview.

#### In order to determine IHP status, review the following documentation:

**PPG0** – If 337d is after March 1, 2017 (follow Attachment A chart)

**Deportation Order** – differs from INS Detainer or Notify. Signature authority of the deportation order will determine IHP assignment.

**INS Detainer** – Requires IHP Interview (**IHP INTRVW**), unless a final order of removal is noted. If the inmate is to be deported, the CMA assignment should be **NO IHP HRG**.

If no documentation is located, **IHP INTRVW** is appropriate.

## Appendix 4: IHRP Facilities

Table 2

IHRP Facilities, Pre- and Post-Expansion, BOP and Contract

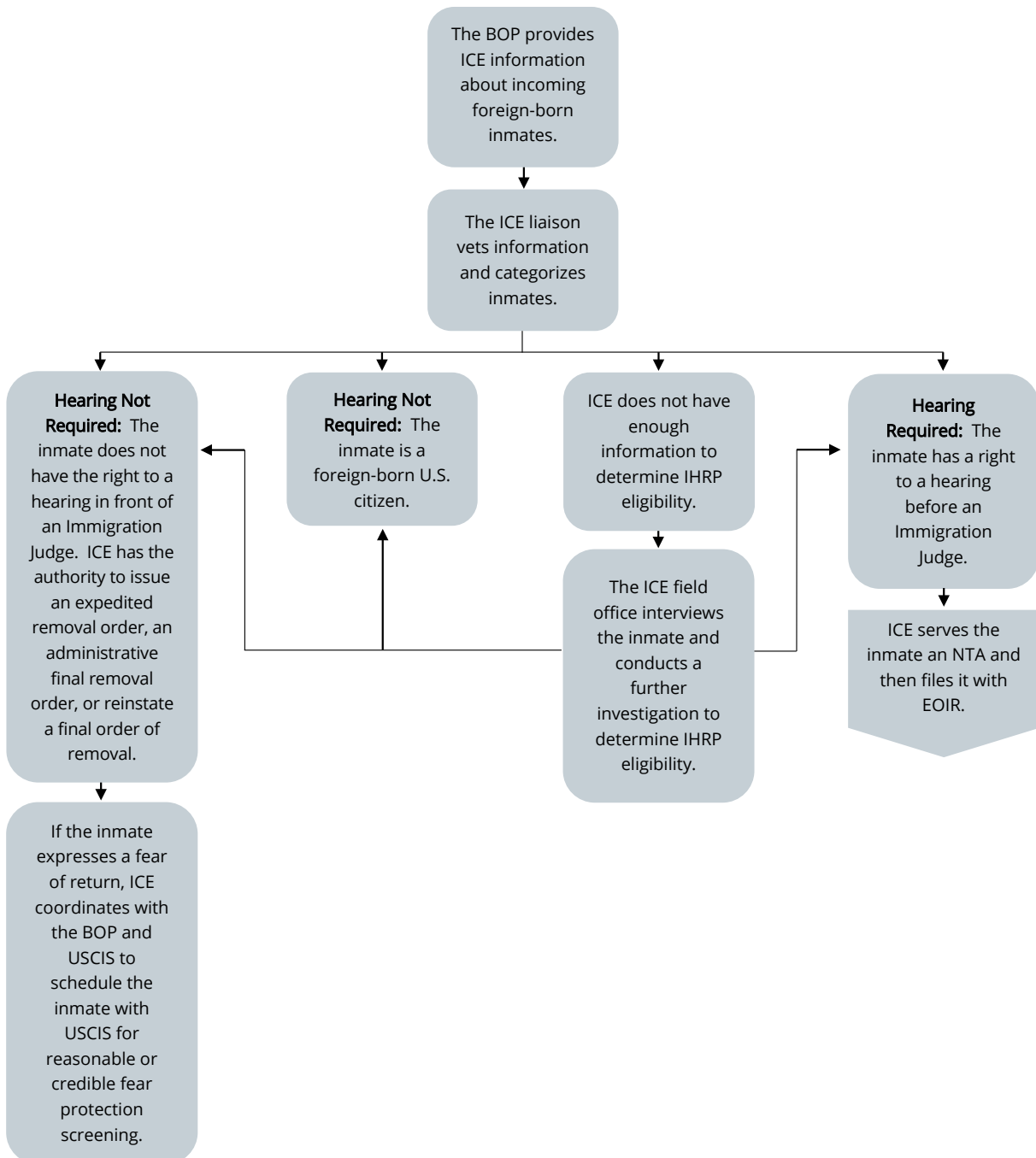
Type of Facility	Facility Name and Location	IHRP Facility as of May 2021
<i>Pre-Expansion</i>	Low Security Correctional Institution Allenwood, Pennsylvania	√
	Federal Correctional Institution (FCI) Allenwood, Pennsylvania	√
	U.S. Penitentiary (USP) Allenwood, Pennsylvania	√
	FCI La Tuna, Texas	√
	FCI Aliceville (female), Alabama	√
	FCI Dublin (female), California	√
	Adams County Correctional Center, Mississippi	X
	Big Spring Correctional Center (Cedar Hill and Flightline), Texas	√
	D. Ray James Correctional Center, Georgia	X
	Giles W. Dalby Correctional Center, Texas	√
	Moshannon Valley Correctional Center, Pennsylvania	X
	Reeves Detention Centers I&II and III, Texas	√
<i>Post-Expansion</i>	FCI Oakdale 2, Louisiana	√
	FCI Pollock, Louisiana	√
	USP Pollock, Louisiana	√
	Federal Detention Center SeaTac, Washington	√
	USP Victorville, California	√
	FCI Victorville I, California	√
	FCI Victorville II, California	√
	FCI Waseca (female), Minnesota	√
	Taft Correctional Institution, California	X
<b>Total Number of IHRP Facilities as of May 2021</b>		<b>17</b>

Source: IHRP program documents

## Appendix 5: IHRP Eligibility Process

Figure 6

IHRP Eligibility Process Flow Chart



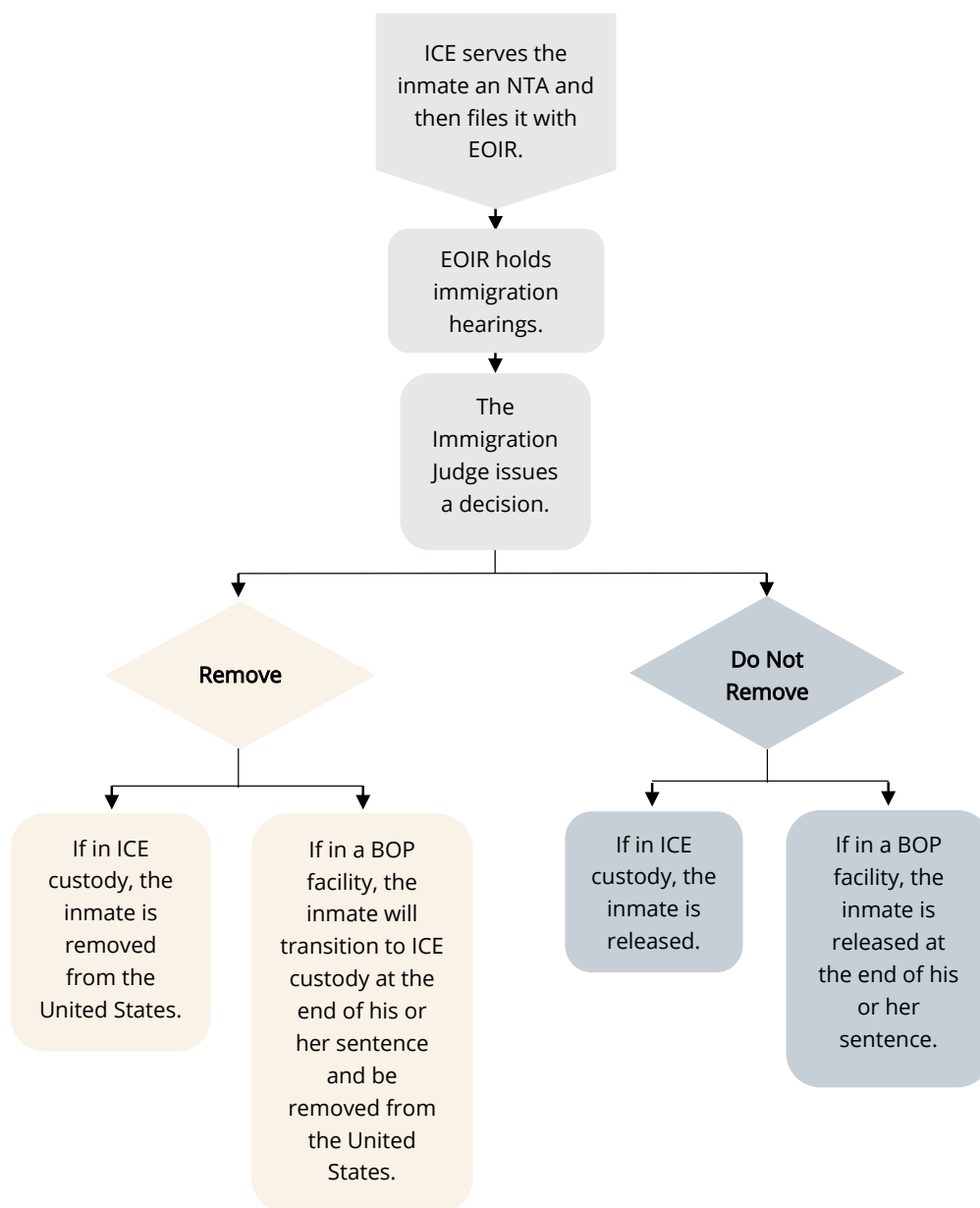
Note: A Notice to Appear (NTA) is a legal document summoning a person to appear before an Immigration Judge.

Source: OIG analysis of IHRP program documents

## Appendix 6: IHRP Removal Proceedings

Figure 7

IHRP Removal Proceedings Flow Chart



Note: A Notice to Appear (NTA) is a legal document summoning a person to appear before an Immigration Judge.

Source: OIG analysis of IHRP program documents

## Appendix 7: EOIR Immigration Courts That Process IHRP Cases

<b>Arizona</b> Eloy Florence Phoenix Tucson	<b>Kansas</b> Kansas City	<b>North Carolina</b> Charlotte
<b>California</b> Adelanto Imperial Los Angeles North Los Angeles, Van Nuys San Diego San Francisco	<b>Louisiana</b> La Salle <a href="#">Oakdale</a>	<b>Ohio</b> <a href="#">Cleveland</a>
<b>Colorado</b> Denver	<b>Maryland</b> <a href="#">Baltimore</a>	<b>Oregon</b> <a href="#">Portland</a>
<b>Connecticut</b> <a href="#">Hartford</a>	<b>Massachusetts</b> <a href="#">Boston</a>	<b>Pennsylvania</b> <a href="#">York</a>
<b>Florida</b> <a href="#">Miami</a>	<b>Michigan</b> <a href="#">Detroit</a>	<b>Puerto Rico</b> San Juan
<b>Georgia</b> <a href="#">Atlanta</a> Stewart	<b>Minnesota</b> <a href="#">Fort Snelling</a>	<b>Texas</b> <a href="#">Dallas</a> <a href="#">El Paso</a> Houston <a href="#">San Antonio</a>
<b>Illinois</b> <a href="#">Chicago</a>	<b>Nebraska</b> <a href="#">Omaha</a>	<b>Utah</b> Salt Lake City
	<b>Nevada</b> <a href="#">Las Vegas</a>	<b>Virginia</b> Arlington
	<b>New Jersey</b> <a href="#">Elizabeth</a> <a href="#">Newark</a>	<b>Washington</b> <a href="#">Seattle</a>
	<b>New York</b> Fishkill Ulster	

## Appendix 8: IHRP Facility Locations

Figure 8

Map of Pre- and Post-Expansion IHRP Facilities as of May 2021



Notes: CC=Correctional Center; FDC=Federal Detention Center; FCI=Federal Correctional Institution; LSCI=Low Security Correctional Institution; USP=U.S. Penitentiary. Pre-expansion facilities are in black, and post-expansion facilities are in blue. Reeves I&II is one facility built in two phases.

Source: OIG analysis



## Appendix 9: DOJ Response to the Draft Report



U.S. Department of Justice

Justice Management Division

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Washington, D.C. 20530

### MEMORANDUM

TO: René Rocque Lee  
Assistant Inspector General  
Evaluation and Inspections Division

FROM: Lee J. Lofthus  
Assistant Attorney General  
for Administration

SUBJECT: Management Response Letter to the DOJ IG's formal draft report  
A-2018-007 entitled *Review of the Institutional Hearing and Removal  
Program Expansion for Federal Inmates*

Lee Lofthus Date: 2021.09.16  
13:15:11 -04'00'

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The Department of Justice (the Department or DOJ) has reviewed the recommendation contained in the Inspector General's report entitled, *Review of the Institutional Hearing and Removal Program Expansion for Federal Inmates A-2018-007* released on September 1, 2021. The Department is pleased to provide its response to the recommendation.

**Recommendation 1:** Develop performance metrics to assess the effect of the Institutional Hearing and Removal Program expansion and assess the program itself, including the roles and responsibilities each agency will have related to performance metrics, data collection, and evaluation.

**Response:** The Bureau of Prisons (BOP) and the Executive Office for Immigration Review (EOIR) concur with the recommendation. The following are actions taken and planned in furtherance of the recommendation. BOP generated a roster of approximately 20,000 non-U.S. citizens to be vetted by Immigration and Customs Enforcement (ICE) to determine proper inmate placement in the Institutional Hearing and Removal Program (IHRP). Once vetted by ICE, the BOP will make updates, if necessary, to Case Management Assignments (CMA) in SENTRY. This will ensure accurate IHRP CMA assignments have been entered into SENTRY.

When assignments have been corrected, an updated roster will be sent to EOIR. This roster will list inmates who are designated to an IHRP site and are participating (IHP PART) in the program and inmates who require a transfer (IHP PEND) to an IHRP site for participation in the program. This roster will be shared with ICE and EOIR on at least a quarterly basis. Accurate

counts will enable BOP, ICE, and EOIR to establish reliable populations to conduct viable performance analyses. Once analyses have been conducted, the agencies can work to establish metrics that best represent the desired performance (and establish baselines and/or future performance targets). Based on current conditions and subject to change due to unforeseen circumstances causing delay, the estimated completion date for these actions is early 2023.

If you have any questions, please do not hesitate to contact me on 202-514-3101.

## Appendix 10: OIG Analysis of DOJ's Response to the Draft Report

The OIG provided a draft of this report to the BOP and EOIR for comment. The Department provided a joint response, which is included in Appendix 9 to this report. The OIG's analysis of the joint response and the actions necessary to close the recommendation are discussed below.

### Recommendation 1

Develop performance metrics to assess the effect of the Institutional Hearing and Removal Program expansion and assess the program itself, including the roles and responsibilities each agency will have related to performance metrics, data collection, and evaluation.

**Status:** Resolved.

**DOJ Response:** The BOP and EOIR concurred with the recommendation. The Department stated that the BOP has generated a roster of approximately 20,000 non-U.S. citizens in the BOP population, which will be provided to ICE to vet and determine proper inmate placement in the IHRP. Once ICE makes the determinations for placement, the BOP will make updates, if necessary, to the Case Management Assignments (CMA) for these inmates in SENTRY, which will ensure that accurate IHRP CMA assignments have been entered into SENTRY. When assignments have been corrected, an updated roster will be sent to EOIR and will list inmates who are designated to an IHRP site and participating in the program (IHP PART), as well as inmates who require a transfer to an IHRP site for participation in the program (IHP PEND). The BOP will share the roster with ICE and EOIR on at least a quarterly basis. The Department stated that accurate counts will enable the BOP, ICE, and EOIR to establish reliable populations to conduct viable performance analyses. Once analyses have been conducted, the agencies can work to establish metrics that best represent the desired performance (and establish baselines and/or future performance targets). The Department estimated that these actions would be completed in early 2023.

**OIG Analysis:** The BOP and EOIR's planned actions are responsive to the recommendation. By January 10, 2022, please provide an update on the vetting and IHRP determinations of the approximately 20,000 noncitizens in the BOP population and the CMA updates required as a result of the vetting. Additionally, please describe any actions taken to establish performance metrics, including defining the roles and responsibilities of each agency related to the performance metrics, data collection, and evaluation.