Department of Homeland Security
Office of Inspector General

Removals Involving Illegal Alien Parents of United States Citizen Children

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Preface

The Department of Homeland Security, Office of Inspector General, was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*. This is one of a series of audit, inspection, and special reports prepared as part of our oversight responsibilities to promote economy, efficiency, and effectiveness within the department.

This report addresses the number of instances over the past 10 years in which the illegal alien parent of a United States citizen child was removed from the country. It is based on interviews with employees and officials of relevant agencies and institutions and a review of applicable documents.

The recommendations herein have been developed to the best knowledge available to our office, and have been discussed in draft with those responsible for implementation. It is our hope that this report will result in more effective, efficient, and economical operations. We express our appreciation to all of those who contributed to the preparation of this report.

Richard L. Skinner

Richard L. Skinner
Inspector General

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Abbreviations

CBP	Customs and Border Protection
COBOL	Common Business-Oriented Language
DACS	Deportable Alien Control System
DHS	Department of Homeland Security
DRO	Office of Detention and Removal Operations
ENFORCE	Enforcement Case Tracking System
ICE	Immigration and Customs Enforcement
NCIC	National Crime Information Center
OIG	Office of Inspector General
OIS	Office of Immigration Statistics

OIG

Department of Homeland Security
Office of Inspector General

Executive Summary

The Committee on Appropriations for the House of Representatives directed the Department of Homeland Security Office of Inspector General, through H. Rep. 110-181, to report on detentions and removals involving U.S. citizen children and their parents among Immigration and Customs Enforcement's detention center population over the past 10 years. The requested data included: (1) the total number of aliens removed from the United States; (2) the number of instances in which one or both parents of a U.S. citizen child were removed; (3) the reason for the parents' removal; (4) the length of time the parents lived in the United States before removal; (5) whether the U.S. citizen children remained in the United States after the parents' removal; and (6) the number of days a U.S. citizen child was held in detention.

The United States conducted 2,199,138 alien removals between FYs 1998 and 2007. Existing data indicate that these removals involved 108,434 alien parents of U.S. citizen children. Alien parents were removed because of immigration violations, such as being present without authorization or committing criminal violations that affect immigration status. Data limitations decrease the reliability of these results, including the absence of a requirement for staff to collect data that establish which aliens are the parents of U.S. citizen children.

We were unable to compile all the requested data because Immigration and Customs Enforcement does not collect the following specific information: (1) the number of instances in which both parents of a particular child were removed; (2) the length of time a parent lived in the United States before removal; and (3) whether the U.S. citizen children remained in the United States after the parents' removal. Immigration and Customs Enforcement reported detaining no U.S. citizen children.

We are recommending that Immigration and Customs Enforcement analyze and report on the feasibility of establishing procedures to document the number of removed alien parents and the age of aliens' children to indicate whether they are minors or adults.

Background

The 1952 *Immigration and Nationality Act* established the basic structure of today's U.S. immigration law, including the procedures for removing an alien. U.S. immigration law provided opportunities for discretionary relief from removal for aliens who were lawfully admitted as permanent residents but who faced removal because they had criminal convictions. For example, the law allowed aliens who had substantial ties to the United States, including spouses and children, to prove to an immigration judge that the negative aspects of their convictions were outweighed by their U.S. connections. In addition, removal could be suspended if the illegal alien could establish that: (1) he or she had been physically present in the United States continuously for 7 years before the application of the suspension; (2) he or she was of good moral character; and (3) the deportation would result in extreme hardship to the deportee or his or her spouse, parent, or child who is a U.S. citizen or permanent resident.

In 1996, Congress adopted the *Antiterrorism and Effective Death Penalty Act* and the *Illegal Immigration Reform and Immigrant Responsibility Act.* The 1996 laws changed the guidelines for removing noncitizens with criminal convictions. The laws expanded the list of aggravated felonies, crimes for which one offense makes an alien removable, by adding many types of crimes and lowering the threshold for other crimes to qualify as aggravated felonies. In addition to murder and drug or firearms trafficking, aggravated felonies now include all crimes of violence or theft when the term of imprisonment is a year or more, as well as numerous other crimes.[1] If removed, aggravated felons are permanently barred from reentering the United States unless the Attorney General provides permission for reentry.[2]

Legal changes in the 1990s also decreased other defenses against removal, even for aliens who are not aggravated felons. Previously, permanent resident aliens who had committed crimes but resided in the United States for 7 years could seek a hearing for discretionary relief from removal if their positive circumstances—such as family ties—outweighed the negative aspect of their crime. Currently, aliens who have committed certain crimes that are not aggravated felonies may be granted a waiver under limited circumstances, one of which is preventing "extreme" hardship to the alien's U.S. citizen or permanent resident child, spouse, or

[1] 8 USC § 1101(a)(43).
[2] 8 USC § 1182(a)(9)(A).

parent.[3] Once removed, aliens who are not aggravated felons are barred from reentering the United States for five to twenty years.[4]

Alien Removal Data Tracking Systems

Immigration and Customs Enforcement (ICE) obtained data from the Deportable Alien Control System (DACS). DACS is a 25-year-old Common Business-Oriented Language (COBOL)-based system that ICE field offices use to track detainees. DACS automates many of the clerical control functions associated with the arrest, detention, and removal of illegal aliens. Information recorded in DACS for each detainee includes items such as alien registration number, name, country of origin, book-in date, and detention facility where the alien is housed. We used DACS to determine which removals involved alien parents of U.S. citizen children.

Previously, the Department of Justice Office of Inspector General (OIG), the Government Accountability Office, and our office have reported on several general limitations of DACS data.[5] Some of the concerns with the reliability and responsiveness of DACS data include the following:

- Data entry was untimely and needed better management controls.
- Data regarding aliens and final removal actions were not consistently recorded.
- DACS users did not receive sufficient training.
- Written standards to ensure the quality of data entry were unavailable.

In addition, ICE officials said that information and reports are difficult to retrieve from DACS because of the limited number of programmers who can create COBOL queries.

As of August 2008, ICE completed the transfer of DACS removal data into the Enforcement Case Tracking System (ENFORCE)

[3] 8 USC § 1182(h).
[4] 8 USC § 1182(a)(9).
[5] DHS OIG, *Review of U.S. Immigration and Customs Enforcement's Detainee Tracking Process*, OIG-07-08, November 2006; DHS OIG, *Detention and Removal of Illegal Aliens*, OIG-06-33, April 2006; Department of Justice OIG, *The Immigration and Naturalization Service's Removal of Aliens Issued Final Orders*, I-2003-04, February 2003; Government Accountability Office, *Immigration Enforcement: Better Data and Controls Are Needed to Assure Consistency with Supreme Court Decision on Long-Term Alien Detention*, GAO-04-434, May 2004.

Alien Removal Module. DACS was still in use during our fieldwork, but it has been phased out since the module has been deployed nationwide. Established in 1996, ENFORCE supports web-based data entry and has other improvements as well. In addition to removal data, ENFORCE records alien apprehensions conducted by ICE and the Offices of the Border Patrol and Field Operations in Customs and Border Protection (CBP).

Before ICE was created in 2003, the Immigration and Naturalization Service recorded alien data in ENFORCE and DACS. Currently, the Department of Homeland Security Office of Immigration Statistics (OIS) uses DACS data to determine formal removals, and uses ENFORCE and DACS data to compile various immigration enforcement reports.

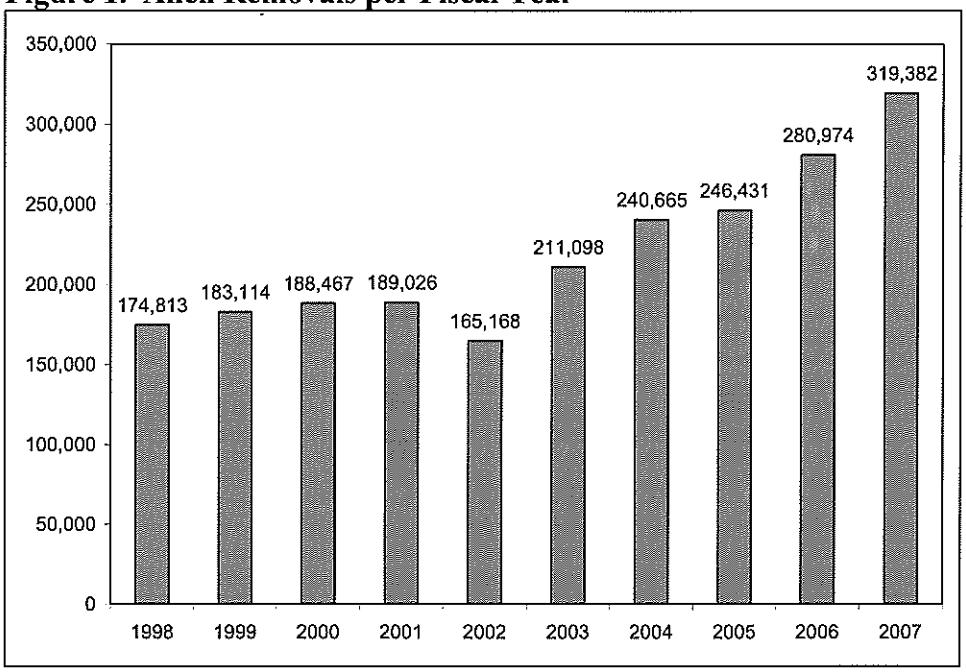
Results of Review

Between FYs 1998 and 2007, 2,199,138 alien removals occurred in the United States, involving 108,434 alien parents of U.S. citizen children. Alien parents were removed because of immigration violations, such as being present without authorization or committing criminal violations that affect immigration status. ICE does not collect data on the following requested items: (1) the number of instances in which both parents were removed; (2) the length of time a parent lived in the United States before removal; or (3) whether the U.S. citizen children remained in the United States after the parents' removal. ICE reported detaining no U.S. citizen children.

Alien Removals Exceed Two Million Between FYs 1998 and 2007

OIS uses DACS and ENFORCE data, including removals conducted by ICE, CBP, and the Immigration and Naturalization Service, to publish data on the number of aliens removed from the United States. OIS data in Figure 1 include aliens who were compelled to leave the United States based on an order of removal, including expedited removals. Voluntary departures without an order of removal, such as Mexican nationals returned to Mexico by the Border Patrol, are not included. The data are based on each removal, and aliens who were removed more than once are counted multiple times.

Figure 1. Alien Removals per Fiscal Year



Source: OIS, 2007 Yearbook of Immigration Statistics.

This data is current as of July 2008. Owing to the time lag in data entry for removals, OIS updates the data each year and does not consider the data complete until 3 years have elapsed.

More Than 100,000 Alien Parents of U.S. Citizen Children Were Removed Between FYs 1998 and 2007

Our analysis provides an approximate number of removals involving one alien parent of a U.S. citizen child. We were unable to establish whether both parents of a child were removed because the family relationships between different alien records in DACS are not clear.

According to DACS data, 108,434 alien parents of U.S. citizen children were removed between FYs 1998 and 2007. More than a third of the parents—40,260 or 37.1%—were previous offenders who returned to the United States after their first removal and subsequently were removed on other occasions during the 10-year period. As a result, the total number of parent removals was 180,466.

The number of parent removals has generally increased since FY 1998, with a peak in FY 2004. We counted individual parents' removal year according to their earliest removal in our data set. Figure 2 shows that

fewer parents were removed for the first time in FYs 2006 and 2007 than in previous years, and many of these removals involved recidivists.

Figure 2. Removals Involving Alien Parents of U.S. Citizen Children

Fiscal Year	Individual Parents Removed	Total Removals of Alien Parents
1998	13,081	14,001
1999	13,410	15,914
2000	11,848	15,851
2001	11,138	16,807
2002	9,922	16,528
2003	11,586	20,864
2004	11,074	21,965
2005	9,981	20,939
2006	8,460	19,360
2007	7,934	18,237
Total	108,434	180,466

Source: OIG analysis of DACS data from August 7, 2008.

Although the data set has several specific limitations, we used it in our analysis because it is the primary recorded source of this information. In addition to the general limitations of DACS data previously described, the following are specific limitations of ICE's data regarding whether aliens are parents of U.S. citizen children:

- ICE does not require staff to record this data in DACS; data entry on the immigration status of aliens' children is optional.
- The child status data is not updated when family structure changes owing to birth, death, marriage, divorce, or other reasons.
- The DACS data do not include some aliens who depart without an order of removal. For example, alien parents who are apprehended at the border shortly after crossing may agree to return voluntarily. These parents may have U.S. citizen children from previous time in the United States, but their child status information is not collected in DACS because their departure is a voluntary return.
- The child status data does not distinguish between adult children and minor children. The recorded data are based on the family relationship without reference to the child's age.

ICE officials also told us that an alien may not provide child status information, or may provide misleading or incomplete information, for fear that government authorities may apprehend family members.

Even in the absence of complete and accurate documentation, ICE records show that a significant number of alien parent removals occurred. However, because ICE has made the collection of child status data voluntary, current data are not comprehensive. A more complete data set is paramount in evaluating proposed legislative and policy options to reduce or prevent parent removals in specific circumstances.[6] The costs and benefits of these options could be more accurately assessed if data on the magnitude and characteristics of the alien parent population were available. Therefore, ICE should analyze and report on the feasibility of requiring staff to collect and document the number of removed aliens who are parents of U.S. citizen children.

In addition, ICE should assess the feasibility of requiring staff to collect new data to establish the age of a child when a parent is removed. Because minors do not have legal and financial independence, they may be more affected by a parent's removal than adult children. In addition, minor children are unable to request immigration benefits for their parents, unlike adult children who are 21 years old or older. New data on children's ages would help establish the effect of alien parent removals on U.S. citizen children who are minors.

Recommendations

We recommend that the Assistant Secretary, ICE:

Recommendation 1: Analyze and report on the feasibility of establishing procedures to ensure that data on the number of removed aliens who are parents of U.S. citizen children are collected and documented.

Recommendation 2: Analyze and report on the feasibility of establishing procedures to document whether the U.S. citizen children of removed aliens are minors at the time of the removal of the alien parent(s).

[6] H.R. 5035, 109th Cong. (2006); Human Rights Watch, *Forced Apart: Families Separated and Immigrants Harmed by United States Deportation Policy*, July 2007.

Management Comments and OIG Analysis

We evaluated technical and written comments prepared by ICE regarding our draft report and, where appropriate, made changes to ensure the accuracy of information. ICE management agreed with the report findings and recommendations, and provided corrective actions for all recommendations. A copy of ICE's written comments, in its entirety, is included as Appendix B.

ICE's Response to Recommendation 1:

ICE agreed with our recommendation, and will initiate a study of this issue within 60 days of OIG's final report.

OIG Analysis: We consider ICE's comments responsive to the recommendation, which is resolved and open pending our receipt of the results and analysis of ICE's study of this issue.

ICE's Response to Recommendation 2:

ICE agreed with our recommendation, and will initiate a study on this issue within 60 days of OIG's final report.

OIG Analysis: We consider ICE's comments responsive to the recommendation, which is resolved and open pending our receipt of the results and analysis of ICE's study of this issue.

Alien Parents Were Removed for Multiple Reasons

For aliens to be removable, they must have committed an immigration violation according to the *Immigration and Nationality Act*. The particular reason under the Act for which an alien is removed is recorded in DACS as the "final charge." Most final charge types refer to an immigration issue directly, such as being present without authorization or attempting entry without proper documentation. Some final charge types relate to other issues that affect immigration status, such as criminal violations, national security grounds, or health reasons. The most common final charge categories for alien parent removals were "present without authorization" and "criminal violations."

According to ICE and OIS staff, the final charge recorded in DACS may not reflect the most serious charge for the removal. Aliens who are criminals may be removed under a different final charge for the

convenience of the government. For example, our data set includes aliens convicted of homicide who were removed under the final charge category "present without authorization" rather than "criminal violations." In addition, the government may prove more than one charge; however, DACS allows only one data entry for final charge.

We aggregated the final charge data using categories developed by OIS. The "other" category includes certain reentry violations, health conditions, and other reasons. Figure 3 depicts the final charge categories for the 180,466 parent removals between FYs 1998 and 2007.

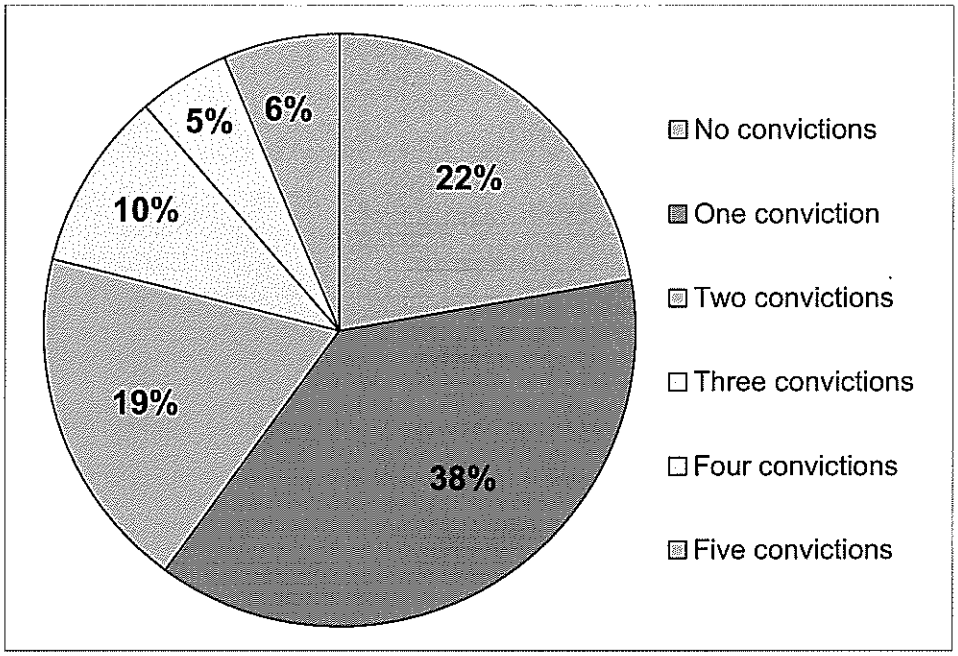
Figure 3. Final Charge Category per Removal

Final Charge Category	Removals
Present without authorization	68,179
Criminal violations	63,510
Previously removed, ineligible for reentry	25,604
Attempted entry without proper documents or through fraud or misrepresentation	20,340
Public charge	1,118
Smuggling or aiding illegal entry	725
Failed to maintain status	664
Other	313
National security and related grounds	13
Total Parent Removals	**180,466**

Source: OIG analysis of DACS data from August 7, 2008.

To supplement the final charge data, we reviewed criminal history data in DACS. DACS can track up to five criminal convictions per alien using crime codes from the Department of Justice's National Crime Information Center (NCIC). DACS includes NCIC crime codes for charges that have not yet resulted in a conviction; however, we restricted our data to convictions. Among alien parents of U.S. citizen children, 24,076, or 22.2%, had no recorded convictions, while the remaining 77.8% had one or more convictions.

Figure 4. Convictions per Alien Parent



Source: OIG analysis of DACS data from August 7, 2008.

The DACS user manual includes more than 400 NCIC codes for the types of crimes aliens may have committed. We aggregated the data on criminal convictions using categories developed by OIS. More than half of the convictions recorded in DACS were related to one of three offenses: dangerous drugs—57,803 or 34.0%, immigration—24,344 or 14.3%, or assault—12,555 or 7.4%. See Appendix C for a complete list.

DACS also contains data on whether aliens committed aggravated felonies. Aggravated felonies are crimes of such seriousness that a single offense renders an alien removable under the *Immigration and Nationality Act*. The act defines more than 20 crimes as aggravated felonies. The majority of alien parents removed, 61,590 or 56.8%, were aggravated felons.

ICE Does Not Collect Data on Length of Residence or Child Residence

ICE does not collect data on the full length of time an alien is present in the United States before removal. DACS contains data on an alien's most recent date of entry into the United States; however, no DACS field shows the alien's date of *first* entry. Because many aliens leave and reenter the country, the data on the most recent date of entry was unreliable for

calculating the full length of time that alien parents lived in the United States before removal. In addition, DACS data do not indicate where aliens' children reside or whether they depart the United States with a removed parent.

U.S. Citizen Children Were Not Held in Detention

ICE does not have records of holding U.S. citizen children in detention. ICE officials said that there were no instances of detaining U.S. citizen children and that ICE would not knowingly hold a U.S. citizen child in detention.

Before a person may be placed in immigration detention, staff from CBP's Office of Border Patrol, the Office of Field Operations, or ICE agents from the Office of Investigations must determine that the person is a removable alien. This determination may be based on interviews and other evidence. Known U.S. citizens are not placed in immigration detention. ICE officials said that if CBP or ICE identifies the child as a U.S. citizen, the child is released to the parent's designated custodian or to Child Protective Services. In the case of Kebin Reyes, a U.S. citizen child who accompanied his alien father during an immigration apprehension, ICE reported in its February 13, 2008, testimony to Congress that it released the child to the father's designated custodian as soon as the custodian was identified and located.

In cases involving alien children, the apprehending office contacts a juvenile coordinator in the Juvenile and Family Residential Management Unit within ICE's Office of Detention and Removal Operations (DRO). This unit operates two housing facilities for alien family groups, and it also serves as a conduit to place unaccompanied alien children in the custody of the Office of Refugee Resettlement in the Department of Health and Human Services. The juvenile coordinator reviews the determination that the child is a removable alien before arranging detention for the child. If the child's alien status is in question, headquarters officials in the Juvenile and Family Residential Management Unit assist in the determination. If the alien status of a child under 5 years of age is unclear, the unit treats the child as a U.S. citizen based on the *Immigration and Nationality Act* rules for birth citizenship, and does not detain the child.[7]

[7] 8 USC § 1401(f).

ICE recently supplemented the policies that protect against the detention of U.S. citizens. On May 23, 2008, DRO issued a memorandum requiring the full investigation of all affirmative claims to U.S. citizenship before a person is taken into custody. If the person is already in ICE custody, the investigation must take place before final disposition of the case. This memorandum has been integrated into the national standard operating procedures for all DRO field offices.

The House of Representatives Committee on Appropriations directed that we review ICE's detention center population over the past 10 years for data related to the removal of the alien parents of U.S. citizen children.[8] The requested data included: (1) the total number of U.S. removals; (2) the number of instances in which one or both parents of a U.S. citizen child was removed; (3) the reason for the parents' removal; (4) the length of time the parents lived in the United States before removal; (5) whether the U.S. citizen children remained in the United States after the parents' removal; and (6) the number of days a U.S. citizen child was held in detention.

We interviewed officials from OIS and ICE headquarters in Washington, DC, to become familiar with the process used to collect and report information on detentions and removals. In addition, we reviewed reports from OIS; ICE documentation, including the DACS user manual and detention standards; immigration laws and regulations; reports from the Government Accountability Office, the Department of Justice Office of Inspector General, and our office on the reliability of detention and removal data; and other related reports and articles.

We obtained data on the number of illegal aliens removed between FYs 1998 and 2007 from the OIS *2007 Yearbook of Immigration Statistics*. Because we were asked to report on the detained population, we focused on formal removals recorded in DACS, which does not include data on most voluntary departures and returns. To compile the data on illegal parents removed, we asked ICE to provide more specific data from DACS on illegal aliens removed between FYs 1998 and 2007. We requested that ICE limit the list to aliens with an entry in the CHILD-STAT data field, which indicates whether the illegal alien is the parent of a U.S. citizen child. We also requested data fields related to the illegal aliens' family status, reason for removal, and length of time in the United States before removal.

Using computer-assisted auditing techniques, we eliminated duplicate and inapplicable records, reducing 474,783 records to 180,466. The resulting figure provided the number of removals involving illegal alien parents of U.S. citizen children. Using alien registration numbers, we grouped cases where one illegal parent

[8] H. Rep. 110-181, at 26 (2007).

had been removed multiple times to find the number of individual illegal parents removed. For these individual parents, we counted the removal year based on their earliest removal in our 10-year data set. When reviewing criminal history, we excluded crimes that had not resulted in a conviction. We aggregated the data on criminal convictions and final charge for removal using categories developed by OIS.

We conducted our fieldwork from April to August 2008. This review was conducted under the authority of the *Inspector General Act of 1978*, as amended, and according to the *Quality Standards for Inspections*, issued by the President's Council on Integrity and Efficiency.

Appendix B
Management Comments to the Draft Report

Office of the Assistant Secretary

U.S. Department of Homeland Security
500 12th Street SW
Washington, DC 20536

U.S. Immigration and Customs Enforcement

MEMORANDUM FOR: Richard F. Skinner
Inspector General

FROM: John P. Torres
Acting Assistant Secretary

SUBJECT: Response to Recommendations: OIG Draft Report "Removals Involving the Alien Parents of United States Citizen Children," dated October 2008.

U.S. Immigration and Customs Enforcement (ICE) appreciates the opportunity to discuss this issue with the Office of Inspector General (OIG) audit team and to comment on the team's findings and recommendations.

As we discussed earlier, the data provided to ICE by alien adults subject to removal concerning their parentage of U.S. citizen children is most often incomplete and unverifiable. As such, the data is often unreliable for policy and decision making purposes.

Further, we request, that the OIG amend the title of this report to more accurately reflect the topic examined, which is the removal of *illegal* alien parents of United States citizen minors. The current title could be construed to imply that ICE removes aliens who have legal status under U.S. immigration law. On the contrary, ICE only removes aliens who have been determined to be in the United States illegally. Further, this audit focused on minor children vice adult sons and daughters.

ICE provides the following comments to the subject report:

Recommendation 1: "Analyze and report on the feasibility of establishing procedures to ensure that data on the number of removed aliens who are parents of U.S. citizen children are collected and documented."

ICE Response: ICE concurs and will initiate a study of this issue within 60 days of the publishing of the OIG final report.

ICE requests that this recommendation be considered resolved and open pending our submission of the results of the study and analysis to the OIG.

Recommendation 2: "Analyze and report on the feasibility of establishing procedures to document whether the U.S. citizen children of removed aliens are minors at the time of removal of the alien parents."

ICE Response: ICE concurs and will initiate a study of this issue within 60 days of the publishing of the OIG final report.

ICE requests that this recommendation be considered resolved and open pending our submission of the results of the study and analysis to the OIG.

Please contact ICE OIG Audit Portfolio Manager Margurite Barnes at (202) 732-4161 if there are any questions or concerns regarding this response.

Appendix C
Types of Crimes Committed by Alien Parents

Category of Criminal Conviction	Total
Dangerous Drugs	57,803
Immigration	24,344
Traffic Offenses	12,555
Assault	12,490
Family Offenses	8,603
Burglary	8,179
Larceny	6,645
Weapon Offenses	5,863
Stolen Vehicle	4,159
Robbery	3,571
Obstructing Judiciary, Congress, Legislature	3,350
Sexual Assault	3,185
Sex Offenses (not involving assault or commercialized sex)	3,051
Stolen Property	2,710
Fraudulent Activities	2,509
Forgery	2,114
Obstructing the Police	1,739
Public Peace	1,133
Homicide	994
Health Safety	776
Invasion of Privacy	700
Damage to Property	561
Kidnapping	547
Flight, Escape	465
Commercialized Sexual Offenses	295
Crimes Against Person	241
Public Order Crimes	234
Property Crimes	209
Arson	185
Extortion	171
Liquor	99
Embezzlement	88
Smuggling	75
Bribery	66
Juvenile Offenders	64
Tax Revenue	52
Gambling	29
Morals Crimes	28
Threats	25
Obscenity	24
Sovereignty	14
Conservation	13
Abortion	6
Military	5
Civil Rights	3
Total Alien Parent Convictions Recorded in DACS	**169,972**

Source: OIG analysis of DACS data from August 7, 2008.

Appendix D
Major Contributors to This Report

Deborah Outten-Mills, Chief Inspector, Department of Homeland Security, Office of Inspections

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Wynne Kelch, Senior Inspector, Department of Homeland Security, Office of Inspections

Department of Homeland Security

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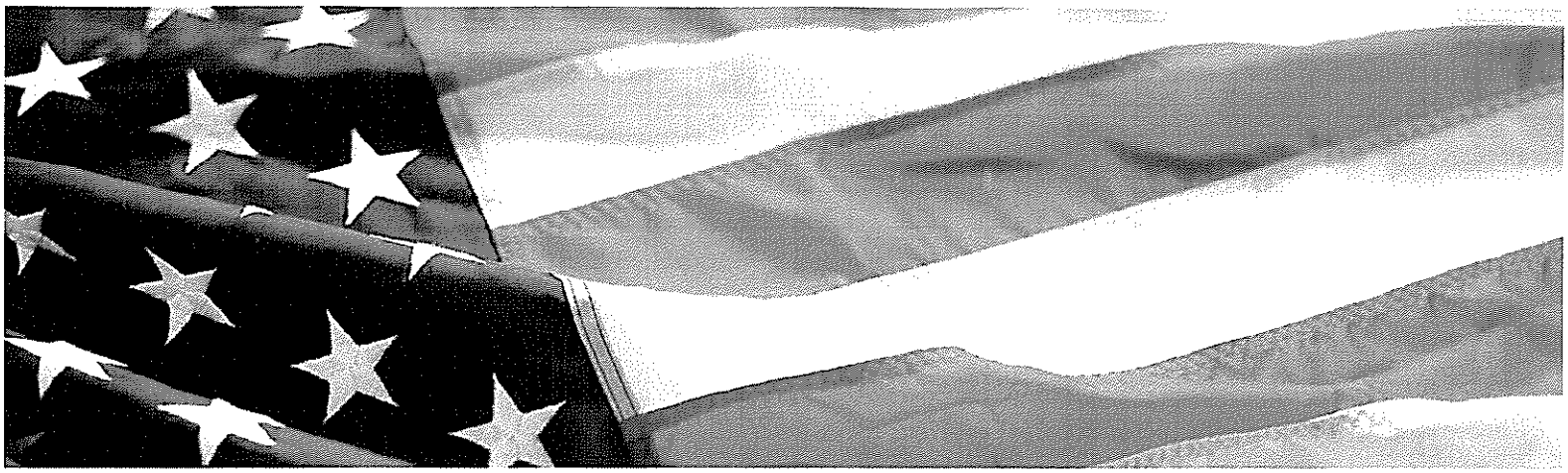
Chief, Homeland Security Branch
DHS OIG Budget Examiner

Congress

Congressional Oversight and Appropriations Committees, as appropriate



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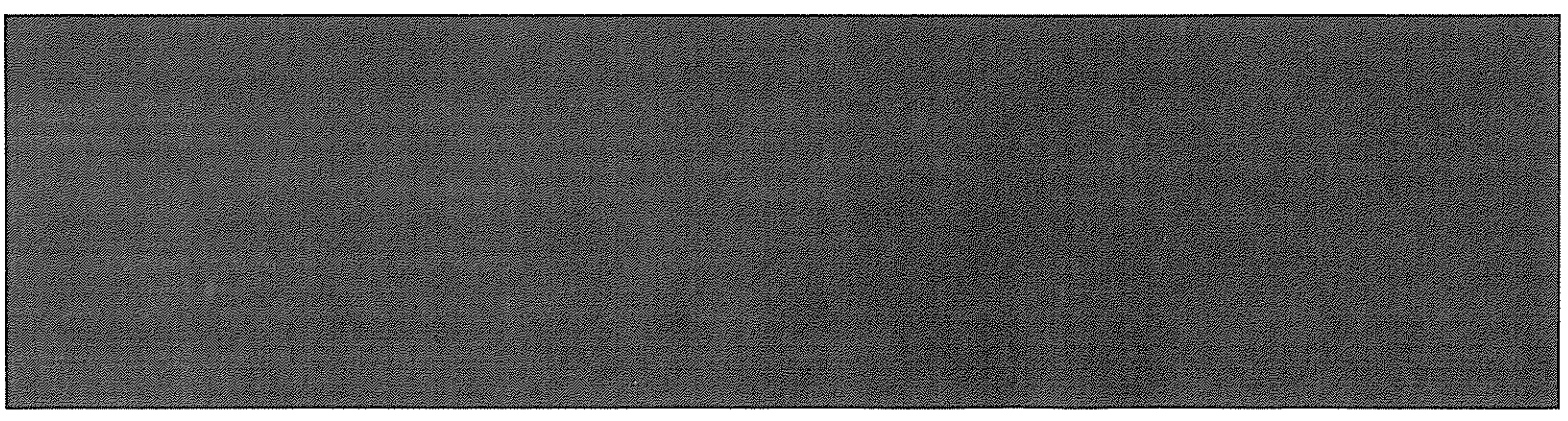
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