

# **EXHIBIT A**

United States Government Accountability Office



Report to Congressional Committees

November 2014

# ALTERNATIVES TO DETENTION

Improved Data  
Collection and  
Analyses Needed to  
Better Assess  
Program  
Effectiveness

# GAO Highlights

Highlights of GAO-15-26, a report to congressional committees

## Why GAO Did This Study

Aliens awaiting removal proceedings or found to be removable from the United States are detained in ICE custody or released into the community under one or more options, such as release on bond and under supervision of the ATD program. Within the Department of Homeland Security (DHS), ICE is responsible for overseeing aliens in detention and those released into the community. In 2004 ICE implemented the ATD program to be a cost-effective alternative to detaining aliens. ICE administers the program with contractor assistance using case management and electronic monitoring to ensure aliens comply with release conditions—including appearing at immigration court hearings and leaving the United States if they receive a final order of removal. The Joint Explanatory Statement to the 2014 Consolidated Appropriations Act mandated that GAO evaluate ICE's implementation of the ATD program.

This report addresses (1) trends in ATD program participation from fiscal years 2011 through 2013 and the extent to which ICE provides oversight to help ensure cost-effective program implementation, and (2) the extent that ICE measured the performance of the ATD program for fiscal years 2011 through 2013. GAO analyzed ICE and ATD program data, reviewed ICE documentation, and interviewed ICE and ATD contractor officials.

## What GAO Recommends

GAO recommends that ICE analyze data to monitor ERO field offices' implementation of guidance and require the collection of data on the Technology-only component. DHS concurred with the recommendations.

View GAO-15-26. For more information, contact Rebecca Gambler at (202) 512-8777 or [gambler@gao.gov](mailto:gambler@gao.gov).

November 2014

## ALTERNATIVES TO DETENTION

### Improved Data Collection and Analyses Needed to Better Assess Program Effectiveness

## What GAO Found

From fiscal year 2011 through fiscal year 2013, the number of aliens who participated in the U.S. Immigration and Customs Enforcement's (ICE) Alternatives to Detention (ATD) program increased from 32,065 to 40,864, in part because of increases in either enrollments or the average length of time aliens spent in one of the program's components. For example, during this time period, the number of aliens enrolled in the Full-service component, which is run by a contractor that maintains in-person contact with the alien and monitors the alien with either Global Positioning System (GPS) equipment or a telephonic reporting system, increased by 60 percent. In addition, the average length of time aliens spent in the Technology-only program component, which offers a lower level of supervision at a lower contract cost than the Full-service program component and involves ICE monitoring of aliens using either telephonic reporting or GPS equipment provided by a contractor, increased by 80 percent—from about 10 months to about 18 months. In 2011, ICE recommended practices in guidance to its Enforcement and Removal Operations (ERO) field offices to better ensure cost-effective implementation of the program. For example, ICE recommended that field officers move aliens who have demonstrated compliance under the Full-service component to the less costly Technology-only component. GAO's work showed differences in ERO field offices' implementation of the guidance. However, ICE headquarters officials said that because of limitations in how they collect and maintain program data, they do not know the extent to which field officers have consistently implemented this guidance. ICE plans to institute new data collection requirements to address these limitations and use these data for a variety of purposes; however, ICE has not considered how to analyze these data to monitor the extent to which ERO field offices are implementing the guidance. Analyzing these data, once collected, could help ICE better monitor the extent to which ERO field offices are implementing the practices in its guidance intended to ensure more cost-effective program operation.

ICE has established ATD program performance measures to, among other things, assess alien compliance with requirements to appear in court and leave the country after receiving a final order of removal, but it has not collected complete data for assessing progress against these measures. Specifically, ICE's ATD contractor collected data for the Full-service component, and from fiscal years 2011 through 2013, these data showed that over 99 percent of aliens with a scheduled court hearing appeared in court as required. However, ICE did not collect similar performance data to report results for aliens enrolled in the Technology-only component—which composed 39 percent of the overall ATD program participants in fiscal year 2013—because when the program was first created, ICE officials stated that they envisioned that most aliens would be in the Full-service component with data tracked by the contractor. ICE plans to expand the contractor's role in data collection but does not plan to require collection of performance data for aliens enrolled in the Technology-only component; rather ICE plans to leave it to the discretion of field officials as to whether to require the contractor to collect these data. Without requirements to collect these data, ICE may not have complete information to fully assess program performance.

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**Abbreviations**

ATD	Alternatives to Detention
BI	Behavioral Interventions, Inc.
DHS	Department of Homeland Security
EOIR	Executive Office for Immigration Review
ERO	Enforcement and Removal Operations
GPS	Global Positioning System
ICE	Immigration and Customs Enforcement
INA	Immigration and Nationality Act
RCA	Risk Classification Assessment
TRUST Act	Transparency and Responsibility Using State Tools Act

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U.S. GOVERNMENT ACCOUNTABILITY OFFICE

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Washington, DC 20548

November 13, 2014

The Honorable Mary Landrieu  
Chairman  
The Honorable Dan Coats  
Ranking Member  
Subcommittee on Homeland Security  
Committee on Appropriations  
United States Senate

The Honorable John Carter  
Chairman  
The Honorable David Price  
Ranking Member  
Subcommittee on Homeland Security  
Committee on Appropriations  
House of Representatives

For more than a decade, the federal government has been exploring cost-effective alternatives to immigration detention that would provide appropriate federal oversight for some of the over 1.5 million aliens in fiscal year 2013 who, if not detained in a detention facility, were released into the community.<sup>1</sup> The Department of Homeland Security's (DHS) U.S. Immigration and Customs Enforcement (ICE) is responsible for such oversight and implemented the Alternatives to Detention (ATD) program in 2004 to be a cost-effective alternative to detention that uses case management and electronic monitoring to ensure adult aliens released into the community comply with their release conditions—including requirements to appear at immigration court hearings—and comply with

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<sup>1</sup>The 1.5 million aliens represent the Department of Homeland Security's (DHS) U.S. Immigration and Customs Enforcement (ICE) caseload in fiscal year 2013 as reported in DHS, U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations, *Fiscal Year 2013 Report to Congress* (Feb. 28, 2014). Of this number, ICE reported that 36,379 aliens were in detention at the end of fiscal year 2013 and the remaining aliens were released into the community. Detention facilities include those facilities ICE manages in conjunction with private contractors or under agreements with state and local governments.

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final orders of removal from the United States.<sup>2</sup> Congress has increased funding for operation of the ATD program from \$3 million in fiscal year 2003<sup>3</sup> to \$91.4 million in fiscal year 2014.<sup>4</sup>

ICE's Enforcement and Removal Operations (ERO) enforces the nation's immigration laws by identifying and apprehending aliens, detaining these individuals when legally required or otherwise appropriate during the course of their immigration proceedings, and upon completion of those proceedings, ensuring that aliens who receive a final order of removal leave the United States. ERO prioritizes the apprehension, arrest, and removal of aliens from the United States who are convicted criminals, pose a threat to national security, are fugitives or obstruct immigration controls, or are recent border entrants. Based out of 24 field offices and 186 suboffices located throughout the country, ERO is also responsible for supervising aliens who are not held in detention facilities, but instead are released to the community under ATD or other release conditions, such as being released on bond. ERO's ATD Unit provides guidance and coordinates program implementation across participating ICE ERO field offices that administer the program, with the assistance of a contractor that provides technological and case management services. ERO field officials' responsibilities include ensuring that detained and nondetained aliens comply with requirements to appear in court for their immigration hearings, which are administered by the Department of Justice's Executive Office for Immigration Review (EOIR).<sup>5</sup> At 59 EOIR immigration

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<sup>2</sup>In removal proceedings initiated by DHS, an immigration judge determines whether an alien is removable from the United States as a result of being deemed inadmissible under section 212(a) of the Immigration and Nationality Act (INA) (8 U.S.C. § 1182(a)) or deportable under section 237(a) of the INA (8 U.S.C. § 1227(a)), and, if removable, whether such alien is eligible for relief or protection from removal under section 240 of the INA (8 U.S.C. § 1229a) or the United Nations Convention Against Torture. See Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, art. 3, Dec. 10, 1984, 1465 U.N.T.S. 85. Obligations of the United States under article 3 of the Convention Against Torture were implemented pursuant to the Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. No. 105-277, div. G, tit. XXII, ch. 3, subch. B, § 2242, 112 Stat. 2681, 2681-822, 2681-823. See Regulations Concerning the Convention Against Torture, 64 Fed. Reg. 8478 (Feb. 19, 1999).

<sup>3</sup>149 Cong. Rec. H707, H885 (daily ed. Feb. 12, 2003).

<sup>4</sup>160 Cong. Rec. H475, H930 (daily ed. Jan. 15, 2014).

<sup>5</sup>Under the authority of the Attorney General, EOIR interprets and administers federal immigration laws by conducting immigration court proceedings, appellate reviews, and administrative hearings. See 8 U.S.C. § 1229a; 8 C.F.R. pt. 1003.

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courts across the country, immigration judges conduct court hearings to determine whether aliens should be removed from the country under an order of removal, granted voluntary departure, or allowed to remain in the United States under a form of relief, such as asylum.<sup>6</sup>

Since the ATD program was first implemented, ICE has made changes to align the program with agency priorities and program goals—with some key program changes occurring around 2011. The Joint Explanatory Statement to the 2014 Consolidated Appropriations Act (Pub. L. No. 113-76) mandated that GAO provide a report evaluating ICE's implementation of the ATD program, including any recommendations for how the program could be improved.<sup>7</sup> This report addresses the following questions: (1) What were the trends in ATD program participation from fiscal years 2011 through 2013, and to what extent does ICE provide oversight to help ensure cost-effective program implementation? (2) To what extent has ICE measured the performance of the ATD program for fiscal years 2011 through 2013?

To determine the trends in ATD program participation and to what extent ICE provides oversight to help ensure cost-effective program implementation, we analyzed data for ATD program costs and performance provided by ICE and its contractor; reviewed relevant federal laws and DHS documents including ICE policy memorandums, congressional budget justifications, and ICE's teleconference meeting notes regarding the ATD program; and conducted interviews at ICE and its contractor headquarters and 4 of 24 ERO field office locations. Specifically, we analyzed ICE and contractor ATD program data from fiscal years 2011 through 2013, including data on costs, enrollments, terminations from the ATD program, and average length of time enrolled in the program, to determine program trends over time. We analyzed data from fiscal years 2011 through 2013 to determine trends in the most recent fiscal years in which complete data were available. Using these

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<sup>6</sup>For provisions governing the conduct of removal proceedings, see 8 U.S.C. § 1229a and 8 C.F.R. pts. 1003, 1240. In some cases, aliens may be permitted to depart voluntarily in lieu of or prior to completion of removal proceedings. See 8 U.S.C. § 1229c. Aliens in removal proceedings may apply for relief or protection from removal if they meet the criteria for doing so and, for purposes of asylum, are able to establish that they are refugees within the meaning of section 101(a)(42)(A) of the INA (8 U.S.C. § 1101(a)(42)(A)). See 8 U.S.C. §§ 1158, 1229a(c)(4).

<sup>7</sup>160 Cong. Rec. H475, H930.



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data, we also calculated the average ATD program cost per day per alien. We could not compare this cost per day for aliens who are released under other conditions, such as being released on bond, because ICE does not capture cost data associated with these release options. We also reviewed the Department of Justice's EOIR data on the length of time aliens spend in immigration proceedings before receiving their final disposition. We assessed the reliability of these data by interviewing or soliciting written responses from ICE and EOIR officials regarding their oversight of their respective databases, as well as the ATD database maintained by ICE's contractor, and reviewed the data for any missing data fields, entries with values beyond expected ranges, or other entries that appeared to be unusual. We determined that the data were sufficiently reliable for the purposes of this report. We also interviewed ICE and contractor headquarters officials regarding (1) how ICE has structured the ATD program and how ICE officials decide which aliens to place in the ATD program and at what supervision level; (2) how ICE officials determine when to terminate an alien from the ATD program or one of the program's components;<sup>8</sup> (3) changes to program implementation over time, including future plans; and (4) benefits and challenges of the program. In addition, we interviewed ICE ERO field office officials and contractor officials in four locations—Dallas, Texas; Los Angeles, California; Las Vegas, Nevada; and St. Paul, Minnesota—regarding their implementation of the program.<sup>9</sup> We selected these offices on the basis of various factors, including the (1) size of the program at each office, (2) geographic location, (3) program components offered, and (4) recommendations from cognizant DHS officials. While we cannot generalize the results of our interviews to all ICE ERO field office locations, officials we interviewed provided us with a general overview and perspective on how ICE implements the ATD program at the selected locations. In addition, we compared ICE's management of the ATD

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<sup>8</sup>The ATD program includes two components—the Full-service and Technology-only components. The Full-service component is operated by a contractor and includes a higher level of supervision of aliens than the Technology-only component, which is operated by ICE, utilizing the contractor's systems and equipment.

<sup>9</sup>We did not interview contractor officials in one location because this location did not have a local contractor office.

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program against standards in *Standards for Internal Control in the Federal Government*.<sup>10</sup>

To determine how ICE measured the performance of the ATD program for fiscal years 2011 through 2013, we analyzed DHS documents, congressional budget justifications, and ICE's teleconference meeting notes regarding the ATD program. We also analyzed ICE and ICE contractor data from fiscal years 2011 through 2013 related to ATD program performance, including data on court appearances, removals from the United States, and other performance metrics. To assess the reliability of these data, we interviewed ICE and ATD contractor headquarters officials regarding database oversight and reviewed the data for any missing data fields, entries with values beyond expected ranges, or other entries that appeared to be unusual. We determined that the data were sufficiently reliable for the purposes of this report, except for certain limitations as noted later in our report. For example, because of limitations in some of the performance data, we were not able to assess some aspects of performance results for one component of the ATD program or compare performance data of aliens in the ATD program with performance data for the rest of the nondetained population. We also interviewed ICE and contractor officials in headquarters and the 4 ICE ERO field office locations to obtain their perspectives on performance metrics and future plans for data collection. Additionally, we compared ICE's management of the ATD program against standards in *Standards for Internal Control in the Federal Government*.<sup>11</sup>

We conducted this performance audit from March 2014 to November 2014, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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<sup>10</sup>GAO, *Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1 (Washington, D.C.: Nov. 1, 1999). The standards state that an agency's internal controls should provide reasonable assurances that operations are effective and efficient and that management directives are carried out.

<sup>11</sup>GAO/AIMD-00-21.3.1. *Standards for Internal Control in the Federal Government* states that agencies should develop mechanisms to reliably collect data that can be used to compare and assess program outcomes related to entire program populations.

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## Background

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### EOIR and ICE Roles in Managing Aliens

Within the Department of Justice, EOIR immigration judges conduct hearings to determine whether an alien is removable from the United States and whether he or she is eligible for a form of relief or protection from removal. If an immigration judge determines that an alien is removable from the United States and not eligible for relief or protection from removal, including voluntary departure, the immigration judge can issue an order of removal. The removal order becomes administratively final when all avenues for appeal with EOIR to remain in the United States have been exhausted or waived by the alien, and the alien is to be removed from the United States.<sup>12</sup> Once an order of removal is final, ICE is responsible for carrying out the removal. In fiscal year 2013, ICE reported removing 368,644 aliens from the United States.

While immigration judges have the authority to make custody determinations, ICE also makes the initial decision as to whether to detain aliens in ICE custody or release them to the community pending removal proceedings, subject to certain laws.<sup>13</sup> The Immigration and Nationality Act, as well as other legislation, requires that under specified circumstances ICE detain certain aliens, including those arriving without documentation or with fraudulent documentation, those who are inadmissible or removable on criminal or national security grounds, and those aliens subject to a final order of removal.<sup>14</sup> Even if not required to do so, ICE may detain aliens who it believes pose a threat to public safety or are flight risks, with the option for some aliens to be subsequently released. In fiscal year 2013, ICE booked 440,557 aliens into detention facilities.

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<sup>12</sup>See 8 C.F.R. § 1241.1.

<sup>13</sup>Removal proceedings usually arise when DHS alleges that an alien is inadmissible to the United States, has entered the country illegally by crossing the border without being inspected by an immigration officer, has violated the terms of his or her admission, or otherwise falls into one of the classes of deportable aliens under section 237 of the Immigration and Nationality Act. See 8 U.S.C. §§ 1182, 1227, 1229. Immigration proceedings may begin after ICE receives custody of an alien from another law enforcement agency. ICE may receive custody of aliens from other DHS or ICE entities, such as the Homeland Security Investigations or U.S. Customs and Border Protection.

<sup>14</sup>8 U.S.C. §§ 1225, 1226, 1226a, 1231.

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ICE uses one or more release options when it determines that an alien is not to be detained in ICE's custody—including bond, order of recognizance, order of supervision, parole, and on condition of participation in the ATD program.

- If an alien is not a threat to public safety, presents a low risk of flight, and is not required to be detained, ICE may release him or her on (1) a bond of at least \$1,500 or (2) an order of recognizance that requires the alien to abide by specified release conditions but does not require the alien to post a bond.<sup>15</sup>
- DHS may release an alien on an order of supervision, despite such alien being subject to a final order of removal, where there is no significant likelihood of removal in the reasonably foreseeable future, because, for example, travel documents are not forthcoming.<sup>16</sup> An alien subject to a final order of deportation or removal may also request a stay of deportation or removal.<sup>17</sup>
- ICE may release certain aliens on parole for urgent humanitarian reasons or significant public benefit, or for a medical emergency or legitimate law enforcement objective, on a case-by-case basis.<sup>18</sup>
- Finally, an alien can also be placed in the ATD program, which requires that, among other things, aliens released into the community agree to appear at all hearings and report to ICE periodically.<sup>19</sup>

In fiscal year 2013, ICE released aliens under these various options 113,690 times, as shown in table 1.

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<sup>15</sup>See 8 U.S.C. § 1226; 8 C.F.R. § 1236.1. DHS may set a bond, which may also be used in conjunction with other release conditions, such as placement in ATD. Upon the alien's request, an EOIR immigration judge may redetermine the amount of bond set by DHS. See 8 C.F.R. § 1236.1(d)(1).

<sup>16</sup>See 8 U.S.C. § 1231(a); 8 C.F.R. §§ 241.4, 241.5, 241.13, 241.14. ICE officers determine the frequency with which aliens released on an order of supervision must report to ICE.

<sup>17</sup>See 8 C.F.R. §§ 241.6, 1003.2(f), 1003.23(b)(1)(v).

<sup>18</sup>See 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. §§ 212.5, 235.3(b)(2)(iii).

<sup>19</sup>Upon the alien's request, an EOIR immigration judge may review the alien's placement in ATD in some instances. See 8 C.F.R. § 1236.1(d)(1); *Matter of Aguilar-Aquino*, 24 I. & N. Dec. 747, 753 (B.I.A. 2009).

**Table 1: Number of Times U.S. Immigration and Customs Enforcement (ICE) Released Aliens under Various Options, Fiscal Year 2013**

Release option	Enrollment
Bond	40,714
Order of recognizance	29,672
Order of supervision	13,108
Parole	6,242
Alternatives to Detention	23,954
<b>Total</b>	<b>113,690</b>

Source: GAO analysis of ICE data. | GAO-15-26

Note: The data in the table above include the number of times that ICE decided to release aliens under these options in fiscal year 2013. It does not include aliens who were released under these options in prior fiscal years, and still remain under these options. Further, because aliens may be released under more than one option—either concurrently or at different times—these data may contain duplications.

To assist ICE officers in their decisions whether to detain aliens in ICE custody or release them, ICE developed an analytical tool known as the Risk Classification Assessment (RCA). The RCA, which ICE fully deployed in February 2013, considers several factors related to an alien's public safety and flight risks—such as criminal history, prior removal data, ties to the local community, and gang affiliation—and recommends each alien for detention or release. An ICE officer reviews the RCA results along with other factors, such as an alien's final order status, and, after obtaining supervisory approval, makes a custody determination. ICE officials stated that they generally do not use the RCA for aliens that ICE must detain by law or that are likely to be removed from the United States within 5 days.<sup>20</sup>

## Overview of the ATD Program

ICE created the ATD program in 2004 as another condition of release to help ensure that aliens released into the community appear at their immigration proceedings. The ATD program seeks to provide an enhanced monitoring option for those aliens for whom ICE, or an immigration judge, has determined that detention is neither mandated nor appropriate, yet may need a higher level of supervision than that provided

<sup>20</sup>In fiscal year 2013, the RCA recommended 15,162 aliens for release out of 168,087 total recommendations; the RCA was deployed in February 2013.

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by the less restrictive release conditions.<sup>21</sup> When reviewing an alien's case for possible placement in ATD, officers are to consider the alien's criminal history, compliance history, community and family ties, and humanitarian concerns. ICE may require participation in the ATD program as a condition of the alien's release during immigration proceedings, or upon receipt of the alien's final order of removal or grant of voluntary departure.

For fiscal year 2003, ICE was allocated \$3 million for alternatives to detention to promote community-based programs for supervised release from detention.<sup>22</sup> Subsequently, ICE created the first iteration of the ATD program in 2004 across eight cities; this iteration ran until 2009 and consisted of three separate programs operated by ICE and two companies under separate contracts.<sup>23</sup> These three programs provided varying levels of alien supervision intended to help improve alien attendance rates at scheduled immigration court proceedings. By the end of 2009, the ATD program expanded to all of the 24 ICE ERO field offices and 5 of 186 suboffices.

ICE initiated the second phase of the ATD program in 2009 with a 5-year contract with a private contractor and consolidated the program into a single contract with two components—Full-service and Technology-only.<sup>24</sup> Behavioral Interventions, Inc. (BI), the contractor, operates the Full-service component out of stand-alone sites or out of ICE offices—currently in 45 cities.<sup>25</sup> To be eligible for the Full-service component,

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<sup>21</sup>In limited circumstances related to ongoing class action litigation, EOIR immigration judges can order aliens released subject to "reasonable conditions of supervision, including electronic monitoring if necessary." *Rodriguez v. Robbins*, 2012 WL 7653016, at \*1 (C.D. Cal. 2012), *aff'd*, 715 F.3d 1127, 1131 (9th Cir. 2013).

<sup>22</sup>149 Cong. Rec. H707, H885.

<sup>23</sup>Under this initial phase of the ATD program, the Intensive Supervision Appearance Program began in 2004 and the Enhanced Supervision/Reporting program began in 2007—both of which were operated by contractors. The Electronic Monitoring program was operated by ICE.

<sup>24</sup>According to ICE officials, ICE officially began using the terms "Full-service" and "Technology-only" in January 2011, prior to which the programs were known as the Intensive Supervision Appearance Program and Electronic Monitoring program, respectively.

<sup>25</sup>In fiscal year 2013, the Full-service component was available in 44 cities. ICE expanded Full-service into Fresno, California, in fiscal year 2014.

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aliens must be at least 18 years old and generally must reside within about 75 miles of the contractor's office, depending on the field office. The contractor maintains in-person contact with the alien, which includes requiring periodic office visits and conducting unscheduled home visits, and monitoring the alien with either Global Positioning System (GPS) equipment or a telephonic reporting system.<sup>26</sup> The contractor also provides case management services, which may include helping aliens understand the legal process, acquiring travel documents, and developing travel plans; reminds aliens to attend immigration proceedings; and handles initial alerts and violations for aliens.<sup>27</sup> Last, the contractor documents aliens' attendance at court hearings and compliance with electronic monitoring and in-person supervision requirements. ICE officers are ultimately responsible for removing aliens from the United States and responding to program violations.

Generally, ICE field officials make all decisions about the appropriate level of supervision and type of technology for aliens. Under the current program, an alien's status in immigration proceedings generally dictates the required number of office visits and unscheduled home visits by the contractor for aliens in the Full-service component.<sup>28</sup> For example, aliens whose immigration proceedings are still ongoing (known as pre-order under the ATD contract) must visit the contractor's office once every 2 weeks and be subject to home visits once every 4 weeks. When an alien receives a final order of removal (known as post-order), the frequency of required visits doubles, and an alien with a pending appeal must visit the office and is subject to home visits once every 4 weeks.<sup>29</sup> Further, ICE officers may enroll aliens in ATD who were detained and subsequently

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<sup>26</sup>An alien enrolled in the telephonic reporting voice verification program will receive an automated telephone call at periodic intervals, which will require the alien to call the system back within a certain time frame; the computer will recognize the biometric voiceprint and register the "check-in". It is not the purpose of the voice verification system to locate an alien.

<sup>27</sup>The contractor forwards alerts to ICE if the contractor cannot resolve them or for informational purposes.

<sup>28</sup>ICE officers can change the level of supervision regardless of where an alien is in his or her immigration proceedings, per a contract modification. According to contractor officials, this is typically done in special circumstances.

<sup>29</sup>As of June 2014, 71 percent of the alien population in the Full-service component of ATD was pre-order, 24 percent was post-order, and 4 percent was in appeal. The remaining aliens were in post-order custody review.

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released into the community after a post-order custody review; the level of supervision determined for these aliens depends on whether their removal from the United States is significantly likely in the reasonably foreseeable future.<sup>30</sup>

ICE ERO field office officials manage the Technology-only component of the ATD program, which is available in 96 locations, utilizing the contractor's systems and equipment.<sup>31</sup> The Technology-only component offers a lower level of supervision at a lower contract cost than the Full-service component and allows ICE to monitor aliens' compliance with the terms of their release using either telephonic reporting or GPS equipment provided by the contractor.<sup>32</sup> ICE officers are responsible for providing case management, in addition to removing aliens from the country and responding to violations. In locations where Full-service and Technology-only are available, ICE officers can de-escalate aliens from the Full-service component to the Technology-only component (or vice versa) at their discretion. For both components, ICE officers determine when an alien's participation in the program should be terminated. ICE terminates aliens from the ATD program who are removed from the United States, depart voluntarily, are arrested by ICE for removal, or receive a benefit or relief from removal. ICE may also terminate an alien from the program when aliens are arrested by another law enforcement entity, abscond, or otherwise violate the conditions of the ATD program. Further, ICE may terminate an alien from the program if ICE officers determine the alien is no longer required to participate. The program requirements for the various levels of supervision for aliens in the Full-service and Technology-only components are shown in figure 1.

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<sup>30</sup>ICE ERO field officers are required to conduct a post-order custody review within 90 days of the date an order of removal becomes administratively final. ICE can still detain an alien after 90 days if it expects travel documents for an alien to be forthcoming in the reasonably foreseeable future. ICE is required to review cases for post-order aliens who are not likely to be removed in the foreseeable future and are held in detention for 180 days after receiving a final order and release aliens pending removal, barring special circumstances, such as an alien being a risk to the community or unlikely to comply with a removal order, or posing a significant threat to national security or a significant risk of terrorism. See 8 U.S.C. § 1231(a); 8 C.F.R. §§ 241.4, 241.13, 241.14.

<sup>31</sup>These 96 locations include all 45 sites that support the Full-service component. As of April 2014, 76 out of 96 possible cities had at least one alien who was enrolled in the Technology-only component at any point during the year.

<sup>32</sup>According to ICE officials, these cost data are considered privileged as confidential business/commercial information, and therefore are not presented in this public report.



**Figure 1: Alternatives to Detention Program Requirements**

		Supervision			
Status in immigration proceedings		Office visits	Unscheduled home visits	Electronic monitoring	Review individual service plan
Full-service	Preorder	Once / two weeks	Once / four weeks	Global Positioning System (GPS) or telephonic reporting	Once / four weeks
	Postorder	Twice / two weeks	Once / two weeks		
	Appeal	Once / four weeks	Once / four weeks		
	Postorder custody review: reasonably foreseeable removal	Twice / two weeks	Once / two weeks		
	Postorder custody review: non-foreseeable removal	Once / eight weeks	Once / eight weeks		
Technology only			GPS or telephonic monitoring		

Source: GAO analysis of Behavioral Interventions, Inc., and U.S. Immigration and Customs Enforcement documents. | GAO-15-26

In June 2014, ICE issued a request for proposal for the third phase of the ATD program, to begin in September 2014,<sup>33</sup> which, according to the request, is intended to provide ICE officers with more flexibility to determine the appropriate level of supervision based on an alien’s history and circumstances. Under the second phase of the program, the level of alien supervision for Full-service participants is based on where the alien is in the immigration process. For the third phase, the program’s goals are to be to maintain a high court appearance rate and to remove aliens from the United States after they receive final orders of removal.

<sup>33</sup>The second ATD contract is scheduled to conclude in November 2014. The third contract will begin prior to the conclusion of the second contract to allow time for any needed transition.

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## ICE Expanded the ATD Program and Changed Program Use, but Has Not Monitored Implementation of Guidance Intended to Help Ensure Program Cost-Effectiveness

The number of aliens participating in the ATD program increased from fiscal year 2011 to fiscal year 2013, in part because of increases in either enrollments or the average length of time aliens spent in one of the program's components; and ICE changed the focus of the program to align with changes in agency priorities. Pursuant to ICE guidance in 2011, ICE also recommended that ERO field offices transition aliens among the two ATD program components—or levels of supervision—to help facilitate cost-effective use of the ATD program; however, ICE has not monitored the extent to which ERO field offices have consistently implemented the guidance. ICE plans to increase the average daily participation level of both ATD program components with increased funding, but ATD program officials stated that several factors affect their ability to identify future capacity and expand the program.

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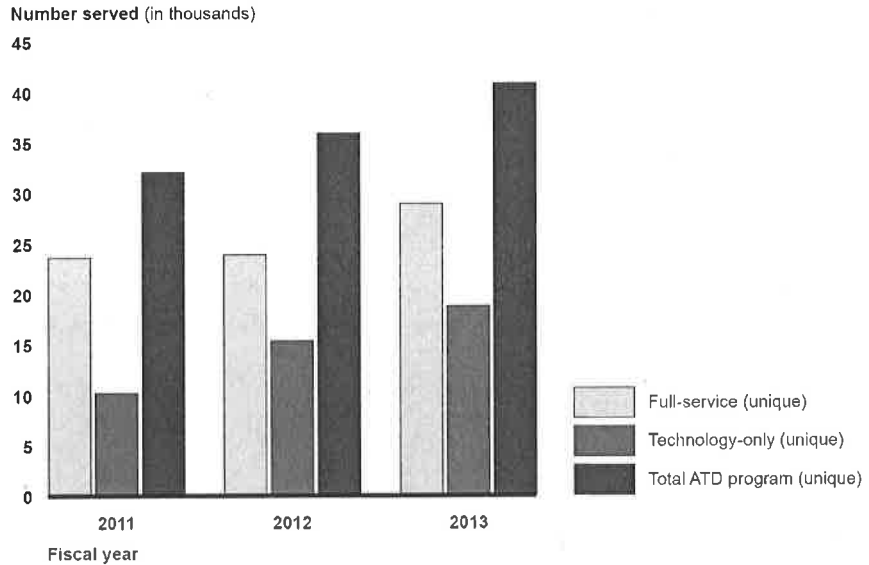
## The Number of Aliens Participating in the ATD Program Increased, in Part, because of Increased Enrollments and Longer Times That Some Aliens Spent in the Program

ICE increased the number of aliens participating in the ATD program over the last 3 fiscal years with some differences between the Full-service and Technology-only components, and this increase, in part, can be attributed to increased enrollments and the increased average length of time aliens spent in the Technology-only component of the program. Specifically, the total number of unique aliens who participated in the program increased from 32,065 in fiscal year 2011 to 40,864 in fiscal year 2013, with most aliens participating in the Full-service component, as shown in figure 2.<sup>34</sup> These numbers include all aliens in the ATD program for each of these years—regardless of the year in which they were initially enrolled. The increase in the number of aliens in the program over this time occurred primarily in the Technology-only component. Specifically, the overall number of aliens participating in the ATD program grew by 27 percent; the number of aliens in the Technology-only component increased by 84 percent; and the number of aliens in the Full-service component increased by 23 percent.

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<sup>34</sup>Aliens are counted once for each of the Full-service and Technology-only components, regardless of whether they were enrolled in the component more than once in the same fiscal year. Accordingly, if an alien was enrolled in both components, he or she would be counted once for each component. However, the total number of aliens in the ATD program is unique and does not include such duplicates.

**Figure 2: Number of Aliens Participating in the Alternatives to Detention (ATD) Program from Fiscal Years 2011 to 2013**



Source: GAO analysis of U.S. Immigration and Customs Enforcement contractor data. | GAO-15-28

Note: The figure represents unique aliens in the Full-service component and the Technology-only component. Since aliens can be placed in both components in the same year, they may be counted in both categories. The total number of aliens in the ATD program is unique and does not include such duplicates.

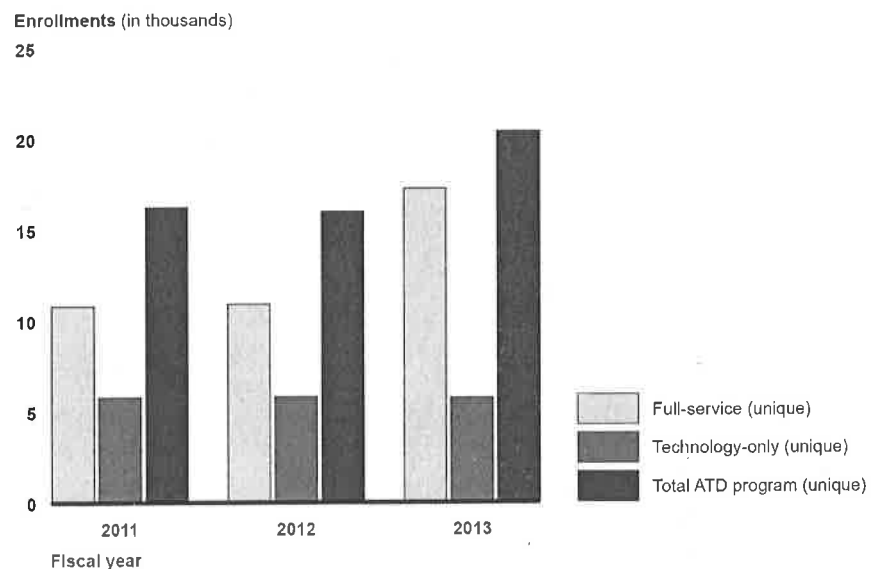
During this time, the composition of aliens in the ATD program also changed to align with agency priorities. Specifically, ICE shifted its overall enforcement priorities with a June 2010 policy memorandum that detailed the priorities for alien apprehension, detention, and removal as follows: (1) aliens who pose a danger to national security or a risk to public safety—including aliens convicted of crimes—and (2) recent illegal entrants and aliens who are fugitives or otherwise obstruct immigration controls.<sup>35</sup> ICE established such priorities because, as stated in the memo, ICE has resources to remove only approximately 400,000 aliens per year from the country, less than 4 percent of the estimated illegal alien population in the United States. According to ICE data, about 50 percent of aliens in the ATD program met an ICE enforcement priority in

<sup>35</sup>The policy laid out in this June 2010 memorandum was reiterated in a March 2011 memorandum which also included one additional statement.

fiscal year 2012, such as aliens convicted of crimes. As of April 2014, ICE reported that about 90 percent of aliens in the ATD program met ICE enforcement priorities and 51 percent were criminal aliens.

One factor contributing to the increase in ATD program participation was that ICE generally increased the number of aliens it enrolled in the program each year. Specifically, the total number of unique enrollments in the ATD program increased by 26 percent—from 16,252 in fiscal year 2011 to 20,441 in fiscal year 2013—although there was a slight decline in fiscal year 2012 before increasing in fiscal year 2013.<sup>36</sup> As shown in figure 3, the increase from fiscal years 2011 to 2013 was due to enrollments in the Full-service component—which increased by 60 percent during this time.

**Figure 3: Alternatives to Detention (ATD) Enrollments from Fiscal Years 2011 to 2013**



Source: GAO analysis of U.S. Immigration and Customs Enforcement contractor data. | GAO-15-26

Note: The figure represents unique aliens in the Full-service component and the Technology-only component. Since aliens can be placed in both components in the same year, they may be counted in

<sup>36</sup>Since aliens can be placed in both the Full-service component and the Technology-only component in the same year, they may be counted in both categories. However, the total number of aliens in the ATD program is unique and does not include such duplicates.

both categories. The total number of aliens in the ATD program is unique and does not include such duplicates.

Information on alien enrollments showed that the extent to which ICE booked aliens into detention facilities or released them into the community varied across fiscal years 2011 through fiscal year 2013, as shown in table 2, although these enrollments were not unique. For example, these enrollments include aliens who may have been enrolled in both detention and one or more release options in the same fiscal year and aliens who may have been booked multiple times into detention facilities or released multiple times under the same option in the same fiscal year.

**Table 2: Detention Facility Bookings and Enrollments under Release Options, Fiscal Years 2011 through 2013**

	2011	2012	2013
Detention	429,096	477,383	440,557
Alternatives to Detention	16,933	17,107	23,954
Other release options			
Bond	40,408	47,091	40,714
Order of recognizance	9,693	16,633	29,672
Order of supervision	8,816	11,646	13,108
Parole	2,132	2,079	6,242

Source: GAO analysis of U.S. Immigration and Customs Enforcement (ICE) data. | GAO-15-26

Note: The table data include the number of times that ICE booked a person into detention or released aliens under the Alternatives to Detention (ATD) program or other release options in each of the fiscal years. These data categories are not mutually exclusive and can include duplicates for several reasons. Aliens may be released into more than one category—either concurrently or at different times. For example, an alien could be in detention prior to being released into the community, released on an order of recognizance and enrolled in the ATD program at the same time, or released and subsequently detained. Further, some aliens may have been detained or placed in detention or under the same release option more than once in the same fiscal year. ICE has limited options for how to place some aliens. For example, ICE may be required to detain some aliens.

During this time, ICE also expanded use of the ATD program across ERO field office and suboffice locations. Specifically, ICE expanded use of the Full-service component from 38 ERO field offices and suboffices in fiscal year 2011 to 44 field offices in fiscal year 2013.<sup>37</sup> During this time, ICE expanded the use of the Technology-only component from 70 to 76 ERO

<sup>37</sup>In 2013, all but one Full-service location had a Technology-only component as well.

field office and suboffice locations that were actively using the component.<sup>38</sup>

Another factor contributing to the increase in the number of aliens in the Technology-only component of the ATD program was an increase in the length of time these aliens were in the program. While the average length of time aliens spent in the ATD program has remained fairly constant, differences existed across the program's components. The average length of time that aliens spent in the Full-service component decreased by about 20 percent from fiscal year 2011 to fiscal year 2013, while the average length of time increased nearly 80 percent for aliens in the Technology-only component during this same time, as shown in table 3. Specifically, aliens enrolled in the Full-service component in fiscal year 2013 spent about 10 months in the component, and those enrolled in Technology-only in fiscal year 2013 spent about 18 months in this component.<sup>39</sup> According to an ICE official, this difference is likely because of guidance that directs field office officials to move compliant aliens from the more expensive Full-service component to the Technology-only component after 90 days, which is discussed later in this report.

**Table 3: Average Length of Time Aliens Spent in the Alternatives to Detention (ATD) Program in Days, Fiscal Years 2011 through 2013**

Year	Full-service	Technology-only	Total ATD program
2011	398	302	382
2012	415	394	409
2013	312	542	383

Source: GAO analysis of U.S. Immigration and Customs Enforcement contractor data. | GAO-15-26

ICE officials stated that how long an alien is in the ATD program before receiving a final decision on his or her immigration proceedings depends on how quickly EOIR can process immigration cases. According to EOIR officials, the length of time before an alien receives a final decision has been much longer for aliens released from detention under the ATD

<sup>38</sup>In April 2014, 96 field offices and suboffices received training, and were eligible, for the Technology-only component, but not all offices were actively using the component. According to ICE officials, these locations may have officers trained in ATD use but are based out of a detention facility and therefore would not have a nondetained population.

<sup>39</sup>ICE reported that aliens spent an average of 29 days in detention in fiscal year 2013.

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program or other release options, primarily because EOIR has prioritized immigration cases for detained aliens, and because detained aliens are less likely to be eligible for relief as many have been convicted of crimes.<sup>40</sup> For example, EOIR data show that after DHS filed the charging document, aliens in detention waited 41 days on average to have their first court hearing and 82 days on average to receive a final decision in fiscal year 2013.<sup>41</sup> In that same year, aliens released from detention waited 281 days on average to have their first hearing and 770 days on average—over 2 years—to receive a final decision.<sup>42</sup>

While our analyses showed that the average daily cost of the ATD program (\$10.55) was significantly less than the average daily cost of detention (\$158) in fiscal year 2013,<sup>43</sup> the extent to which the length of immigration proceedings affects the cost-effectiveness of the ATD program varies under different scenarios. Specifically, we conducted two analyses to estimate when the cost of keeping aliens in the ATD program would have surpassed the cost of detaining an alien in a facility. Under our first analysis, we considered the average costs of ATD and detention and the average length of time aliens in detention spent awaiting an immigration judge's final decision, and found that the ATD program would have surpassed the cost of detention after an alien was in the program for

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<sup>40</sup>In July 2014, EOIR refocused its resources and prioritized cases involving aliens who have recently crossed the southwest border and whom DHS has placed in removal proceedings, in addition to cases involving detained aliens.

<sup>41</sup>EOIR officials stated that they calculated these data for aliens who were detained when the case was completed or, if the case was pending on April 12, 2014, on that date. These aliens may not have been detained for the entire time leading up to the completion of the case. These data show the average time between the filing of the charging document and the first hearing where the first hearing took place in fiscal year 2013, as well as the average time between the filing of the charging document and the immigration judge's decision, not including decisions following remands, where the decision was issued in fiscal year 2013. A case may have more than one hearing.

<sup>42</sup>These data do not include aliens who were never detained. EOIR officials stated that they calculated these data for aliens who had been released from detention by the time the case was completed or, if the case was pending on April 12, 2014, by that date. These data show the average time between the filing of the charging document and the first hearing where the first hearing took place in fiscal year 2013, as well as the average time between the filing of the charging document and the immigration judge's decision, not including decisions following remands, where the decision was issued in fiscal year 2013.

<sup>43</sup>The ATD program and detention cost per day estimates include personnel costs, but do not include expenditures paid toward agency-wide overhead activities, such as rent or information technology services.

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1,229 days in fiscal year 2013—significantly longer than the average length of time aliens spent in the ATD program in this year (383 days).<sup>44</sup> In our second analysis, we considered the average costs of ATD and detention and the average length of time aliens spent in detention—regardless of whether they had received a final decision from an immigration judge—since some aliens may not be in immigration proceedings or may not have reached their final hearing before ICE released them from detention. ICE reported that the average length of time that an alien was in detention in fiscal year 2013 was 29 days. Using this average, we calculated the average length of time aliens could have stayed in the ATD program before they surpassed the cost of detention would have been 435 days in fiscal year 2013.<sup>45</sup> Our analyses of costs for the ATD program from fiscal year 2011 through fiscal year 2013 showed that the costs per day per alien in the ATD program increased to \$10.55 in fiscal year 2013—which includes ATD personnel costs—after decreasing in fiscal year 2012, as shown in table 4.<sup>46</sup> This compares with the average cost of detention, which is \$158 a day per alien, which includes personnel costs.<sup>47</sup>

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<sup>44</sup>Our analysis took into consideration the average daily cost of \$10.55 for the ATD program and the average daily cost of \$158 for placing an alien in a detention facility. Our analysis also considered the average time EOIR reported it took between DHS filing a charging document and an immigration judge issuing a final decision. For aliens detained at the time of the final decision—but who may not have been detained for the entire time leading up to the completion of their case—the average was 82 days in fiscal year 2013. Specifically, we multiplied the average cost of detention with the average time aliens detained at the time of the final decision waited for his or her final decision, and divided this number by the average cost of ATD.

<sup>45</sup>Specifically, we multiplied the average cost of detention with the average time aliens spent in detention, and divided this number by the average cost of ATD.

<sup>46</sup>If an alien is enrolled in Full-service and also has electronic monitoring of GPS or telephonic reporting, ICE counts him or her as having 2 participant days. To adjust for this in our cost per day estimate, we reduced the number of Full-service participant days in half. This cost estimate is higher than what ICE reports, as ICE's estimate is based upon the contract costs for ATD divided by the total number of participation days—it does not include personnel costs. Our estimate incorporates both the cost of ATD personnel, as well as the cost of the ATD contract.

<sup>47</sup>ICE reports an official average daily cost for detention to be \$118 a day, but this cost does not include personnel costs. The detention personnel costs included in our analysis include personnel who work at detention facilities, as well as support staff who support detention-related activities but are not working at the detention facilities.



**Table 4: Average Cost per Alternatives to Detention (ATD) Program Participant Day, Fiscal Years 2011 through 2013**

ATD program	2011	2012	2013
Expenditures (Dollars in millions)	\$64.8	\$64.9	\$85
Participation days	8,061,113	8,297,148	6,045,144
Cost per participant day	\$10.72	\$7.83	\$10.55

Source: GAO analysis of U.S. Immigration and Customs Enforcement data | GAO-15-26

Note: If an alien is enrolled in Full-service and also has electronic monitoring using Global Positioning System or telephonic reporting, he or she is counted as having 2 participant days. To adjust for this in our cost per day estimate, we reduced the number of Full-service participants in half, as reflected in the table above.

ICE officials told us that while ICE received an additional \$24 million funding for the ATD program in fiscal year 2013, by the time it became available, it was too late to expand capacity of the program. These officials stated that they reprogrammed some of the additional funding, and used the remaining on various ATD-related activities, such as conducting trainings and purchasing new vehicles for ICE officers.<sup>46</sup>

### ICE Increased the Number of Aliens Terminated from the ATD Program, but Has Not Monitored Implementation of Guidance to Help Ensure Cost-Effective Program Implementation

ICE increased the number of aliens terminated from the ATD program since 2011 after guidance directed ERO field offices to more cost-effectively use the ATD program; however, ICE has not monitored the extent to which field offices have implemented the guidance. Under the original ATD contract, ICE officials stated that aliens enrolled in the ATD program generally stayed in the program from the time of enrollment through completion of the immigration process (i.e., completion of a final court hearing or, if ordered removed at the final hearing, removal from the United States). However, concerned about the time it has taken for aliens to complete immigration proceedings and the subsequent impact on ATD program costs, ICE recommended in 2011 that ERO field offices help facilitate cost-effective use of the ATD program. Pursuant to this guidance, ICE officials recommended that field officials reserve more intense and costly supervision options under the Full-service component for (1) aliens who are newly enrolled in ATD who do not have an order of removal or an immediate immigration court date and (2) aliens who have

<sup>46</sup>ICE discussed and researched using funds for a kiosk pilot for the ATD program that would allow aliens to check-in with ICE through kiosk machines, but no action was taken to develop and implement the pilot.

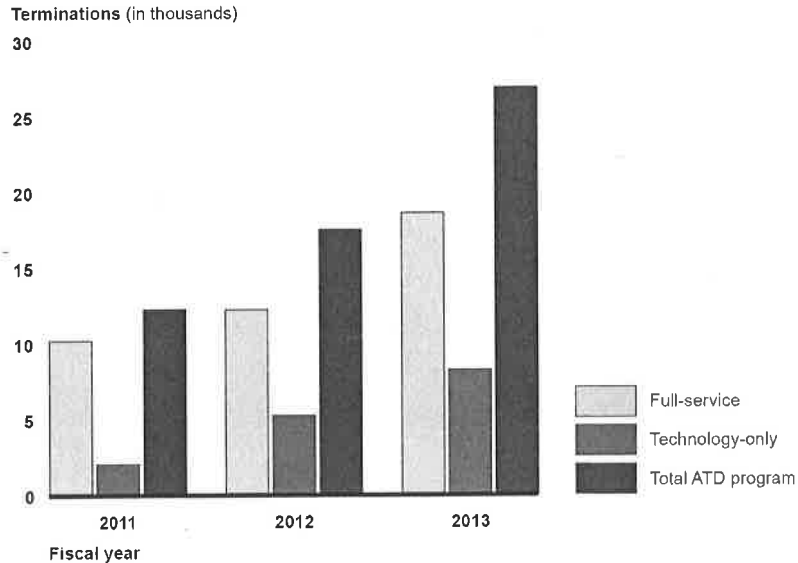
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already received a final order of removal from the country—the latter of which is seen as a best practice, according to ICE. Specifically, pursuant to ICE's guidance, ICE recommended that ICE ERO field office officials assess whether aliens in the Full-service component demonstrated compliance with the conditions of their release, at least every 90 days, and if so, terminate them from the Full-service component after 90 days and de-escalate them to lower levels of supervision at a lower cost by moving them to the Technology-only component of the ATD program.<sup>49</sup> Conversely, ICE recommended that ERO field office officials terminate aliens from the Technology-only component who received their final order of removal or grant of voluntary departure and escalate them to the Full-service component so that ICE, along with the contractor, could more easily monitor and ensure their departure. Subsequently, ICE increased the number of terminations from the two components of the ATD program. Specifically, as shown in figure 4, ICE increased the number of terminations from the Full-service component by 82 percent and the number of terminations from the Technology-only component by 299 percent from fiscal year 2011 to fiscal year 2013.

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<sup>49</sup>The guidance initially recommended that ICE officials review ATD cases every 180 days. However, after reviewing data on when aliens are most likely to abscond, officials stated that the guidance was changed to at least every 90 days.

**Figure 4: Number of Aliens Terminated from the Alternatives to Detention (ATD) Program from Fiscal Years 2011 to 2013**



Source: GAO analysis of U.S. Immigration and Customs Enforcement contractor data. | GAO-15-26

Note: Since aliens could be enrolled in both the Full-service component and the Technology-only component in the same year or may have been enrolled in the same component more than once in a year, they may be counted multiple times if they were terminated more than once in a year.

ICE does not have complete data to identify the specific reasons field officials decided to terminate aliens from the program and therefore cannot determine whether ERO field offices are implementing the guidance for changing an alien's level of supervision between the ATD program components with the goal of cost-effectively implementing the ATD program. According to ICE officials, because the individual circumstances for each alien's case can vary, the decision to terminate or change an alien's level of supervision is made by the field officer, who decides whether to keep aliens in the Full-service component, de-escalate aliens from the Full-service component to the Technology-only component, or terminate aliens from the ATD program entirely by placing them in detention or releasing them under their own recognizance or another release option. While ICE collects some data on the reasons for termination decisions made by field officials, ICE does not collect data on the specific reason why field officials would determine an alien is no longer required to participate in the program. For example, our analysis of termination data for the Full-service component showed that 13 percent of terminations from the Full-service component were made after

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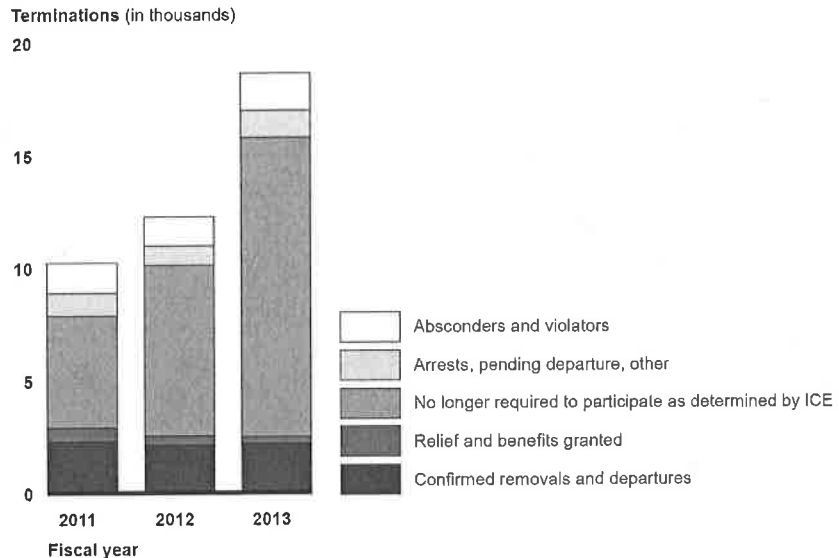
confirmation of an alien's removal and departure from the United States or after the alien had been granted relief and benefits to remain in the country, and another 15 percent of terminations were made for reasons including that aliens had violated the terms of the ATD program, had absconded, had been arrested, were pending departure, or other reasons. However, it was unclear why ERO field office officials made most terminations—71 percent—before the completion of the aliens' immigration proceedings or removal from the United States, because the reason provided was that a field official determined that an alien was no longer required to participate in the program.<sup>50</sup> As a result, ICE officials stated that they did not know if field office officials made the majority of these terminations in response to its guidance recommending changing the levels of supervision that could result in more cost-effective operation of the program, or for other reasons.<sup>51</sup> Figure 5 shows the reasons for Full-service terminations in fiscal years 2011 through 2013.

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<sup>50</sup>Percentages do not add to 100 because of rounding.

<sup>51</sup>According to ICE officials, ICE officers can make these termination decisions for a variety of reasons, including because an immigration judge temporarily removed a case from an immigration judge's calendar (administrative closure), changes in jurisdiction that result from an alien moving to a location where the ATD program is not offered, and ICE's decision to change the level of supervision required for the alien. Although there is a subcode for this category that would provide additional information on the reason for a termination in this category, ICE officials stated that they were unable to query and analyze these data.

**Figure 5: Reasons for Termination from the Full-service Component of the Alternatives to Detention Program, Fiscal Years 2011 through 2013**



Source: GAO analysis of U.S. Immigration and Customs Enforcement (ICE) contractor data. | GAO-15-26

Note: Since aliens could be enrolled in the Full-service component more than once in a year, they may be counted twice if they were terminated more than once in a year.

In addition, ICE contractor data showed ERO field office officials may not be following ICE guidance intended to help ensure cost-effective program implementation. Specifically, data on the Full-service component of the ATD program in fiscal year 2013 showed that the majority of aliens terminated from the Full-service component were not subsequently enrolled into the Technology-only component, as recommended by ICE guidance. These data show that of 12,769 unique aliens terminated from the Full-service component for the reason that ICE determined the alien no longer needed to participate, 1,051—or 8 percent—were subsequently enrolled in the Technology-only component.<sup>52</sup> ICE officials said that because of the data limitations discussed above, they do not have information necessary to analyze why ERO field offices were terminating aliens from higher levels of supervision under the Full-service component

<sup>52</sup>ICE officials stated that there could be additional subsequent enrollments in the Technology-only component that were not captured in their data. For example, some aliens who were terminated from the Full-service component in fiscal year 2013 may have been subsequently enrolled in the ATD program in fiscal year 2014.

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without subsequently enrolling them in lower-level supervision under the Technology-only component as specified in the guidance. For example, they could not determine how many of the cases terminated because ICE decided the alien no longer needed to participate were a result of something outside ICE's control, such as an administrative closure, or how many were terminated because ICE ERO field officers released the alien under an order of recognizance rather than de-escalate the alien's level of supervision to the Technology-only component.<sup>53</sup> These data would provide insight into how field officers are implementing ICE's guidance. In addition, ICE officials stated that they do not have data available to determine how many aliens in the Technology-only component were re-escalated to higher levels of supervision under the Full-service component upon receiving their final order of removal from the country—which ICE considers a best practice to ensure that aliens do not abscond and do comply with requirements to leave the country—because data maintained in its information system on final orders for aliens in the Technology-only component are not reliable. ICE officials said that data maintained in its information system on final orders for aliens in the Technology-only component are not complete because field officials do not have time to track these data given limited resources and other priorities.

Our interviews with ICE officials in three of the four ERO field offices also showed differences in how the ICE guidance was implemented.<sup>54</sup> Officials from two field offices said that they had implemented changes to more actively move aliens to higher and lower levels of supervision, as needed. For example, officials in one field office said that they began generally reviewing cases on a monthly basis and, after 30 days, often lowered the level of supervision of aliens in the Full-service component from using more expensive GPS to less expensive telephonic monitoring if an alien

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<sup>53</sup>In addition, during this time, ICE was directing its ERO field offices to terminate aliens from the ATD program who were not likely removable from the United States, which may have caused an increase in terminations. Although the ATD program, as initially developed, was not intended to provide indefinite monitoring of nonremovable aliens, ICE officials stated that they did enroll nonremovable aliens in the program until ICE changed its program goal focus to removals from court appearances. ICE officials stated that this change was made because they had already achieved a very high court appearance rate and focusing on removals would also align with the agency's overall strategic goals of detaining and removing aliens.

<sup>54</sup>One of the four field offices that we selected to interview did not have the Full-service component.

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had shown compliance during that time. These officials reported that after 90 days they often terminated aliens from the more expensive Full-service component and moved them to the less expensive Technology-only component or other release options. These officials reported re-enrolling aliens who had received their final order of removal in the Full-service component. Officials in the other of these field offices cited implementing a similar practice of de-escalation and escalation of supervision across the Full-service and Technology-only components, with some differences. These officials reported generally reviewing cases every 4 to 6 months and escalating all aliens in the Technology-only component to the Full-service component 30 days before any court hearing, and de-escalating these aliens back down to the Technology-only component after the alien's attendance at the hearing unless a final order of removal was issued. They also said they had a practice to consider enrolling aliens in ATD who are under all release options—not just ATD—when they receive an order of removal. These officials stated that they now review all aliens who receive a final order of removal for possible enrollment in ATD—even if the alien was never previously in the ATD program. According to ICE, Full-service supervision has proven to be a best practice in ensuring successful removal from the United States.<sup>55</sup> Officials in the other field office said that they changed their practice of using Full-service enrollment to focus only on aliens who had received their final order of removal to align with agency priorities. Furthermore, the four field offices we selected for interviews were generally consistent with national trends in placing the majority of aliens in the Technology-only component on telephonic reporting—which has lower associated contract costs than GPS. As of April 2014, 97 percent of aliens in the Technology-only component and 52 percent of aliens in the Full-service component were monitored via telephonic reporting, with the remaining being monitored by GPS.

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<sup>55</sup>ATD contractor officials concurred with this general assessment, stating that they believe that once the order of removal has been issued, it is often difficult to effectively remove an alien when ICE or the contractor has lost contact with the alien because the alien was terminated from the Full-service component of the ATD program. These officials stated that they believe that the Full-service component of the ATD program allows ICE officers to focus more on their law enforcement duties because the contractor case manager can manage the nondetained population in virtually the same manner as an ICE officer. However, as these officials stated, the contractor case manager has a much smaller caseload than an ICE officer, which allows them to have a closer relationship with the alien and they are able to follow up with aliens sooner and more often.

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Under the new ATD program contract to be implemented in September 2014, ICE planned to address these data limitations but did not plan to use these data to monitor the extent to which ERO field offices have implemented the guidance for cost-effective program implementation across field offices. ICE officials said the new ATD program contract will require the contractor to maintain data on final orders; when an alien's supervision level changed; and for aliens that ICE determined are no longer required to participate in the ATD program, the specific reason for this determination. ICE officials stated that these data will provide them with information on how long participants were monitored by the ATD program before being de-escalated to lower levels of supervision or terminated from the program and that these data can be used to establish a better profile of a participant's program life cycle and outcome. While requiring the contractor to maintain these data is a positive step that will help ICE collect more complete data on ATD participants, ICE officials did not have a plan to analyze these data to monitor ERO field offices' implementation of ICE guidance that is intended to ensure more cost-effective use of the program. *Standards for Internal Control in the Federal Government* states that an agency's internal controls should provide reasonable assurances that operations are effective and efficient.<sup>56</sup> The standards also call for agencies to examine and use the information to make decisions and monitor programs. Once additional data are collected under the new ATD program contract, analyzing termination data—specifically data on when an alien's level of supervision changes and the specific reasons for terminations from the ATD program—could help ICE better monitor how ERO field offices are implementing the guidance to cost-effectively use the ATD program.

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**ICE Officials Cited Factors That Affect Future Capacity and Expansion of the ATD Program**

ICE intends to increase the average daily participation level of both ATD program components with increased funding, according to ICE's fiscal year 2015 budget justification; however, ATD program officials stated that several factors affect their ability to identify future capacity and expand the program. These officials said that one of these factors was limited information for determining how many aliens who were detained or otherwise released could have been considered suitable for the ATD program. For example, ATD program officials said that ERO field office officials who manage the ATD program have the ability to see the cases

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<sup>56</sup>GAO/AIMD-00-21.3.1.



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that are referred to the ATD program, but not the cases that resulted in the alien being detained in ICE custody or released under other options after the RCA process is completed. Nationwide, the RCA tool recommended that 91 percent of the 168,087 aliens processed by the RCA in fiscal year 2013 be detained in ICE custody—some of whom were subsequently eligible for bond—and that the remaining 9 percent (15,162 aliens) be released under ATD or other release options. However, ICE field officials managing the ATD program may not have seen the cases that resulted in detention or release and accordingly, are limited in their ability to estimate to what extent ATD program capacity could be expanded or changed in their location. To help increase the number of cases referred for ATD program consideration, ICE has issued guidance to its ERO field offices emphasizing that all nondetained criminal aliens should be given priority consideration for ATD program enrollment. Accordingly, this guidance directs the Criminal Alien Program and Fugitive Operations teams that generate case referrals in the field to coordinate with their local ATD component for enrollment consideration, including aliens released on a bond.<sup>57</sup> ICE reported that field offices coupling a bond with ATD as a condition of release have shown an increased rate of success in alien removals from the United States.

Other factors that ICE officials identified as affecting their ability to identify capacity and expand the ATD program are federal and state statutes and agency guidance. For example, ICE reported that from fiscal year 2011 to fiscal year 2013, 77 percent to 80 percent of aliens in detention facilities were required to be detained under federal law, and were not eligible for consideration in the ATD program.<sup>58</sup> In addition, federal law requires that ICE maintain a minimum of 34,000 detention beds each day,<sup>59</sup> and as part of its fiscal year 2015 budget justification, ICE reported that a decrease in the number of detention beds required to be maintained would result in an increase in the number of aliens who could be enrolled in the ATD program. In regard to state statute, one state, for example, passed a law whereby law enforcement officials have the discretion to

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<sup>57</sup>ICE's Criminal Alien Program is designed to identify, process, and remove criminal aliens from prisons across the United States, and the Fugitive Operations Program is designed to pursue known at-large criminal aliens and fugitive aliens.

<sup>58</sup>See, e.g., 8 U.S.C. §§ 1225(b)(1)(B)(iii)(IV), 1226(c)(1), 1226a, 1231(a)(2).

<sup>59</sup>The Consolidated Appropriations Act for fiscal year 2014 requires ICE to maintain a level of not less than 34,000 detention beds. Pub. L. No. 113-76, 128 Stat. 5, 251.

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cooperate with federal immigration officials by detaining an individual on the basis of an immigration hold after that individual becomes eligible for release from custody, only where certain criteria are met.<sup>60</sup> In regard to agency guidance, ICE has instructed ERO field offices generally not to enroll aliens who are not likely removable, as well as aliens who were brought to the United States as children and may be eligible for the Deferred Action for Childhood Arrivals program.<sup>61</sup>

ICE officials stated that they did not plan to expand use of the ATD program to additional ERO field office locations until after the new contract was in place; however, officials reported that several factors could affect whether a field office could be or is willing to implement the program. For example, ICE reported in May 2014 that five field offices had requested to implement the Full-service component in their office but ICE did not approve the requests because the field offices did not have the necessary resources to implement the program. Such resources include officers' time to respond to instances of alien noncompliance with the terms of the program and review ATD cases and make supervision and termination decisions.

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<sup>60</sup>Transparency and Responsibility Using State Tools Act (TRUST Act), Cal. Gov't Code §§ 7282, 7282.5 (2014). Under the TRUST Act, law enforcement officials may not detain an individual pursuant to an immigration hold, where such individual is eligible for release from custody, unless: (1) continued detention would not violate any other federal, state, or local law, or local policy; and (2) any of the listed conditions under subdivision (a) are satisfied. Section 7282.5(b) of the TRUST Act reiterates that where none of the specified conditions under subdivision (a) are fulfilled, an individual who is eligible for release from custody shall not be detained pursuant to an immigration hold.

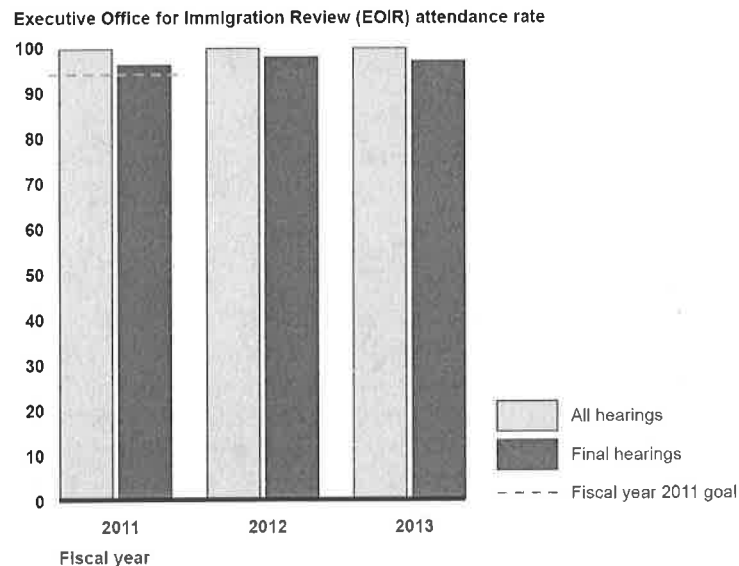
<sup>61</sup>Under this program, certain people who came to the United States as children may be eligible for deferral of any removal action against them for a certain period of time.

**ICE Has Established Program Performance Measures for the ATD Program, but Has Not Collected Complete Data for Assessing Progress against All of These Measures**

ICE established two program performance measures to assess the ATD program's effectiveness in (1) ensuring alien compliance with court appearance requirements and (2) ensuring removals from the United States, as well as performance rates to evaluate the program's performance, but limitations in data collection hinder ICE's ability to assess overall program performance.

**Compliance with court appearances.** ICE established a program performance measure in 2004 to monitor alien compliance with requirements to appear at their immigration hearings. Data collected by ICE's ATD contractor for the Full-service component of the ATD program from fiscal years 2011 through 2013 showed that over 99 percent of aliens with a scheduled court hearing appeared at their scheduled court hearings while participating in this component of the ATD program, with the appearance rate dropping slightly to over 95 percent of aliens with a scheduled final hearing appearing at their final removal hearing, as shown in figure 6.

**Figure 6: Court Appearance Rate for Aliens Enrolled in the Full-service Component of the Alternatives to Detention Program, Fiscal Years 2011 through 2013**



Source: GAO analysis of U.S. Immigration and Customs Enforcement contractor data. | GAO-15-26

Note: Immigration and Customs Enforcement did not have court appearance program goals for the Alternatives to Detention program in fiscal years 2012 and 2013.

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However, ICE does not collect similar performance data or report results on the court appearance rate for aliens enrolled in the Technology-only component of the ATD program—which constituted 39 percent of the overall ATD program in fiscal year 2013. According to ICE officials, the agency did not require the contractor to capture similar data for the Technology-only component because when the ATD program was created, it was envisioned that most aliens would be in the Full-service component for the duration of the immigration process, and data for aliens in the Full-service component are collected by the contractor.<sup>62</sup> ICE officials stated that they did not have sufficient resources to collect such data for the Technology-only component, given other priorities.

ICE has taken steps to address the lack of data collection for the Technology-only component. Specifically, during the course of our review, ICE initiated a pilot program with its contractor in May 2014 to establish improved data collection efforts, as well as expanded supervision options. The pilot, which is being tested in eight cities, increases the role the ATD contractor has in collecting and tracking data on aliens in the Technology-only component. Specifically, the contractor tracks compliance with release requirements, including court appearance requirements, for aliens enrolled in the Technology-only component, as it already does for aliens enrolled in the Full-service component. Under the new contract, ICE plans to implement key aspects of the pilot across all program locations, including giving ICE officers the ability to require the contractor to track data on aliens in the Technology-only component—including data on court appearances—to the contractor, according to the request for proposal for the new ATD program contract. However, ICE officials will not be required to have the contractor collect these data under the

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<sup>62</sup>Although we cannot compare the Full-service population with aliens in the Technology-only population, EOIR does report some data to inform the court appearance rate for all nondetained aliens who do not appear for their immigration hearings, but not specifically for aliens in the ATD program or its components. Data reported in EOIR's *Fiscal Year 2013 Statistics Yearbook* show that, in fiscal year 2013, of the 53,616 decisions rendered by immigration judges for aliens who were never detained, 12,071 (23 percent) were issued in absentia—where the alien did not appear at his or her hearing. This indicates a court appearance rate of 77 percent. In that same year, for aliens who were once detained but subsequently were released from custody, 9,343 of 28,061 decisions were issued in absentia, for a lower court appearance rate of 67 percent. Aliens who were never detained or released may include aliens in the ATD program.

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contract.<sup>63</sup> While ICE's plan to expand data collection for the Technology-only component under the new contract is a positive step that will help provide more information for assessing the performance of that program component, ICE may not have complete data for assessing program performance without requirements that ICE or contractor field staff collect these data. *Standards for Internal Control in the Federal Government* states that agencies should employ control activities to monitor their performance.<sup>64</sup> More specifically, agencies should develop mechanisms to reliably collect data that can be used to compare and assess program outcomes related to entire program populations. Requiring ERO field offices to collect, or have the contractor collect, court appearance data on the Technology-only component of the ATD program would help ensure that ICE has complete data for assessing the performance of that program component as well as the overall ATD program, particularly in light of ICE's guidance issued in fiscal year 2011 directing field offices to transition more aliens to the Technology-only component.

**Removals from the United States.** ICE established a new program performance measure in fiscal year 2011 to assess the number of aliens removed from the country who had participated in the ATD program.<sup>65</sup> ICE officials said the decision to replace the court appearance goal with the removal goal was based on the fact that the court appearance rate had consistently surpassed 99 percent and the program needed to establish another goal to demonstrate improvement over time. For this program performance measure, a removal attributed to the ATD program counts if the alien (1) was enrolled in ATD for at least 1 day, and (2) was removed or had departed voluntarily from the United States in the same

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<sup>63</sup>According to ICE officials, having the contractor track court appearance data for aliens in the Technology-only component will be optional because some aliens in the Technology-only program may have already received their final order and would not require the contractor to track such data.

<sup>64</sup>GAO/AIMD-00-21.3.1.

<sup>65</sup>This removal goal was incorporated in DHS's Future Years Homeland Security Program for fiscal year 2011, according to ICE officials. The Future Years Homeland Security Program lays out DHS's plan for responsibly allocating resources within established funding targets and provides an overview of the department's strategic structure. Although ICE officials stated that they subsequently maintained an overall goal for removals in the Future Years Homeland Security Program, it is not specific to aliens who participated in the ATD program. According to DHS's fiscal year 2015 budget justification, the ATD program aligns with ICE's strategic plan for detaining and removing aliens seeking illegal entry.

fiscal year, regardless of whether the alien was enrolled in ATD at the time the alien left the country. As shown in table 5, ATD met its goal for removals in fiscal years 2012 and 2013.<sup>66</sup> In fiscal year 2012, their goal was to have a 3 percent increase from their fiscal year 2011 total, and in fiscal year 2013, a 3 percent increase from their 2012 removal goal.

**Table 5: Alternatives to Detention Program Goals and Results Related to Removal of Aliens from the United States, Fiscal Years 2011 through 2013**

Year	Goal	Verified removals		
		Total	Full-service	Technology-only
2011	—	2,733	2,458	275
2012	2,815	2,841	2,340	501
2013	2,899	2,901	2,353	548

Source: GAO analysis of U.S. Immigration and Customs Enforcement data. | GAO-15-26

Note: There was no removal goal in fiscal year 2011, as this was the baseline year.

**Performance rates.** ICE also uses four performance rates to evaluate how well the ATD program is operating while aliens are participating in the program.<sup>67</sup> These four performance rates (success rate, failure rate, absconder rate, and removal rate)—though not measures of how well aliens in the ATD program comply with court appearances or removal orders—assess the status of an alien’s case at the time the alien is terminated from the ATD program. These performance rates are based on outcomes defined as favorable, neutral, and unfavorable.

<sup>66</sup>We could not compare the performance data for alien removals under the ATD program with data for alien removals under other release options for a variety of reasons. First, ICE officials reported that the data on the number of aliens in the Technology-only component of the ATD program who received a final order is not tracked, and accordingly, we would not be able to determine the percentage of aliens in ATD who received a final order who were removed from the country. Second, ICE officials said that similar data for other nondetained aliens was either incomplete or untimely. ICE officials cited limited ICE staff resources for monitoring these aliens as a reason for these data limitations.

<sup>67</sup>According to ICE officials, although these rates are not included as part of their larger homeland security goals, they may use these rates to respond to Questions for the Record for Congress, Freedom of Information Act requests, and media inquiries—and officials reported that they provide the methodology on how these rates are calculated, to ensure transparency. In addition, according to ICE officials, further examination of these rates can lead management to evaluate how the ATD program works to see how it can be improved to most effectively meet the demands placed on ICE. For example, these officials stated that an examination of the absconder rate over time was used to help the agency determine when an alien was most likely to abscond from the program.

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- Favorable outcomes reflect cases where the final outcome of an alien's immigration proceeding resulted in either a verified departure from the United States or a grant of relief and benefits to remain in the country while the alien was an active participant in the ATD program.
  - Neutral outcomes do not reflect final outcomes of immigration proceedings, but rather include aliens who are terminated from the ATD program while awaiting departure, after being arrested, or because ICE determined the alien no longer needed to participate in the program—which could be because the case was administratively closed, the alien moved to a jurisdiction that did not have the ATD program, or ICE determined to lower or raise the alien's level of supervision by moving him or her to a detention facility or another release option.
  - Unfavorable outcomes include aliens who were terminated from the ATD program after absconding or violating program requirements.

Specifically, the success rate reflects the percentage of aliens whose cases resulted in either favorable outcomes or neutral outcomes. This rate essentially measures the ATD program's effectiveness in being able to track and monitor an alien while in the program, according to ICE officials. The failure rate is the converse of the success rate, measuring the percentage of unfavorable outcomes, including noncompliance with program terms or absconding from the program. The absconder rate measures the percentage of aliens whom ICE terminated from the program as a result of aliens absconding from the program. The removal rate approximates the percentage of aliens in ATD who will be removed or depart after the completion of their immigration proceedings. ICE calculates these rates for both its Full-service and Technology-only components.

Using these performance rates, ICE reported that for the Full-service component over the last 3 years, ICE, along with its contractor, was able to track and monitor 90 percent or more of aliens until they were terminated from the Full-service component of the ATD program, with variance in the rate of aliens who had absconded from the program or who were projected to be removed from the country. During that same time, ICE reported improved ability to track and monitor aliens in the Technology-only component from nearly 80 percent in fiscal year 2011 to nearly 90 percent in fiscal year 2013. See table 6 for Full-service and Technology-only performance rates over these last 3 years.

**Table 6: Performance Rates for Aliens in the Full-service Component of the Alternatives to Detention (ATD) Program, Fiscal Years 2011 through 2013**

Performance metric	2011		2012		2013	
	Full-service	Technology-only	Full-service	Technology-only	Full-service	Technology-only
<b>Success rate:</b> the percentage of all aliens terminated from the ATD program whose departure from the United States was verified or were granted relief or were no longer required to participate in ATD, pending departure, or arrested. This measure is not intended to be an indicator for successful removal from the United States or compliance with a court appearance; instead, U.S. Immigration and Customs Enforcement (ICE) uses this rate to measure its ability to track and monitor aliens when enrolled in ATD.	90%	79.8%	93%	88%	93.5%	89.5%
<b>Failure rate:</b> the percentage of all aliens terminated from the ATD program who absconded or violated terms.	10%	20.3%	7%	12%	6.5%	10.5%
<b>Absconder rate:</b> the percentage of all aliens terminated from the ATD program who absconded from the program.	8.6%	9.6%	5.6%	3.7%	5.3%	4.5%
<b>Removal rate:</b> the percentage of aliens whose departure from the United States was verified divided by the number of absconders and violators who have received their final orders of removal, and aliens who were verified to have departed the country.	84.1%	44.1%	84.9%	48.9%	79.2%	47.1%

Source: GAO analysis of ICE contractor data. | GAO-15-26

However, ATD program performance measures and rates provide limited information about the aliens who are terminated from the ATD program prior to receiving the final disposition of their immigration proceedings or were removed or voluntarily departed from the country. Specifically, with respect to program performance measures, ICE counts an alien who was terminated from the program and was subsequently removed from the United States toward his or her removal performance measure as long as the alien was in the program during the same fiscal year he or she was removed from the country.<sup>68</sup> However, aliens who were terminated from the program do not count toward court appearance rates if they subsequently do not appear for court. Further, performance rates, for

<sup>68</sup>According to ICE officials, after an alien is terminated from the ATD program, the information obtained while the alien was in the program (i.e., contact information) may assist ICE in locating an alien, as necessary, and accordingly, this is why these aliens are included in the official removal count.



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example, did not reflect whether the 87 percent of the aliens whom ICE terminated from the ATD program in fiscal year 2013 were removed, voluntarily departed from the United States, or were granted relief.<sup>69</sup> ICE officials reported that it would be challenging to determine an alien's compliance with the terms of his or her release after termination from the ATD program given insufficient resources and the size of the nondetained alien population. In accordance with ICE guidance, staff resources are instead directed toward apprehending and removing aliens from the United States who are considered enforcement and removal priorities.

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## Conclusions

The ATD program is intended to help ICE cost-effectively manage the aliens for whom ICE, or an immigration judge, has determined that detention is neither mandated nor appropriate, yet may need a higher level of supervision when released into the community until they are removed from the United States or receive approval to remain in the country. ICE has altered its implementation of the ATD program to address the cost associated with keeping aliens in the program in light of lengthy immigration proceedings. However, by analyzing data that ICE plans to collect on supervision levels and specific reasons aliens are terminated from the program, ICE could be better positioned to monitor ERO field offices' implementation of guidance intended to ensure cost-effective management of the ATD program. Further, collecting reliable data on both components of the program would help ensure that ICE has more complete data for assessing the relative performance of these program components as well as the overall ATD program.

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## Recommendations for Executive Action

To strengthen ICE's management of the ATD program and ensure that it has complete and reliable data to assess and make necessary resource and management decisions, we recommend that the Secretary of Homeland Security direct the Deputy Assistant Secretary of ICE to take the following two actions:

- analyze data on changes in supervision levels and program terminations to monitor ERO field offices' implementation of ICE

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<sup>69</sup>Regarding aliens that ICE terminated from the Full-service component of the program, these aliens may have been subsequently enrolled in the Technology-only component—and in fiscal year 2013, about 8 percent of these aliens were enrolled in the Technology-only component.

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guidance intended to ensure cost-effective management of the program, and

- require that field offices ensure that ICE or contractor staff collect and report data on alien compliance with court appearance requirements for all participants in the Technology-only component of the ATD program.

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## Agency Comments and Our Evaluation

We provided a draft of this report to the Departments of Homeland Security and Justice for their review and comment—both provided technical comments, which we incorporated as appropriate. We provided selected excerpts of this draft report to the ATD contractor to obtain its views and verify the accuracy of the information it provided, and the contractor had no technical comments. DHS also provided written comments, which are summarized below and reproduced in full in appendix I. DHS concurred with the two recommendations in the report and described actions under way or planned to address them.

With regard to the first recommendation, that ICE analyze data on changes in supervision levels and program terminations to monitor field offices' implementation of guidance intended to ensure cost-effective management of the program, DHS concurred. DHS stated that ICE recognized that, because of contractual limitations, information on termination codes was not amenable to detailed reporting and analysis, which limited the program's ability to adapt and improve. To address this, ICE established a requirement under its new ATD contract that information on termination codes must be collected and reported and that this would allow for more in-depth analyses that may yield avenues for further program refinements. DHS provided an estimated completion date of December 31, 2014. These planned actions, if fully implemented to include monitoring of field offices' cost-effective management of the program, should address the intent of the recommendation.

With regard to the second recommendation, to require that field offices ensure that ICE or contractor staff collect and report data on alien compliance with court appearance requirements for all participants in the Technology-only component of the ATD program, DHS concurred. DHS stated that ICE was aware that this recommended enhancement would greatly improve the program and that ICE began working in early fiscal year 2014 to implement the enhancement while developing the requirements for the new ATD contract. Under the new contract, ICE will have the opportunity to select a variety of case management services, including EOIR case tracking for any participant in the ATD program.

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DHS provided an estimated completion date of December 31, 2014. These planned actions, if fully implemented to include oversight on the extent that field offices are ensuring that ICE or contractor staff collect and report data on alien compliance with court appearance rates, should address the intent of the recommendation.

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

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



Rebecca Gambler, Director  
Homeland Security and Justice

# Appendix I: Comments from the Department of Homeland Security

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



**Homeland  
Security**

October 7, 2014

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

Re: Draft Report GAO-15-26, "ALTERNATIVES TO DETENTION: Improved Data Collection and Analyses Needed to Better Assess Program Effectiveness"

Dear Ms. Gambler:

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

The Department appreciates GAO's recognition that U.S. Immigration and Customs Enforcement (ICE) has altered its implementation of the Alternatives to Detention (ATD) program to address the costs associated with keeping aliens in the program during lengthy immigration proceedings. The ATD program meets a critical need for community supervision of the non-detained alien population. ICE will continue actively reviewing its ATD program to enhance program integrity and availability, and continue the program's success as an effective immigration enforcement tool.

The draft report contained two recommendations with which the DHS concurs. Specifically, GAO recommended that the Secretary of Homeland Security direct the Deputy Assistant Secretary of ICE to:

**Recommendation 1:** Analyze data on changes in supervision levels and program terminations to monitor field offices' implementation of ICE guidance intended to ensure cost-effective management of the program.

**Response:** Concur. ICE Enforcement and Removal Operations (ERO) works to identify consistent, appropriate, and new ways to analyze data under the current parameters of collection. This information is then used to evaluate the program and its participants to determine best steps moving forward and to modify the program to ensure the most appropriate levels of monitoring and case management, consistent with the ICE mission. ICE previously recognized that, due to contractual limitations, the termination code subcategories were not amenable to detailed reporting or analysis, which limited the program's ability to adapt and improve. To address this, ICE established a firm requirement under its new ATD contract that termination codes and applicable termination code subcategories must be collected and reported. This will allow for more in-depth data analyses that may yield avenues for further program refinements. Expected Completion Date (ECD): December 31, 2014.

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

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**Recommendation 2:** Require that field offices ensure that ICE or contractor staff collect and report data on alien compliance with court appearance requirements for all participants in the Technology-only component of the ATD program.

**Response:** Concur. ICE ERO recognizes that under the Intensive Supervision Appearance Program II (ISAP II) contract, it did not have the capability to capture court appearance data for those participants who were assigned to the less intensive, Technology-Only (TO) component where case management services were not provided by the contractor. ICE ERO has been aware that the enhancement recommended by GAO would greatly improve the program, so ICE ERO began working in early FY 2014 to implement the enhancement while developing the requirements for the ISAP III contract. Under ISAP III, ICE ERO will have the opportunity to select a variety of case management services, including remote Executive Office for Immigration Review case tracking and technology alerts/violations resolutions, for any participant in the ATD program, regardless of the distance from a contractor location or ICE facility. ECD: December 31, 2014.

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

Sincerely,



Jim H. Crumpacker, CIA, CFE  
Director  
Departmental GAO-OIG Liaison Office

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# Appendix II: GAO Contact and Staff Acknowledgments

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## GAO Contact

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

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## Staff Acknowledgments

In addition to the contact named above, Lacinda Ayers (Assistant Director), Tracey Cross, Landis Lindsey, David Alexander, Pedro Almoguera, Frances Cook, Jon Najmi, Jessica Orr, and Eric Warren made significant contributions to the work.

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