



**U.S. Department of Justice  
Office of the Inspector General  
Evaluation and Inspections Division**

# **The Department of Justice's International Prisoner Transfer Program**

**December 2011**

**I-2012-002**

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## EXECUTIVE DIGEST

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The Office of the Inspector General (OIG) examined whether the Department of Justice (Department) is effectively managing the International Prisoner Transfer Program (treaty transfer program) for foreign national inmates. The OIG evaluated the roles of the Department's components involved in the treaty transfer program, the selection of inmates to be transferred, the timeliness of the process, the costs associated with the program, and recidivism in the United States by inmates who were transferred to their home countries.

The treaty transfer program began in 1977 when the United States and Mexico entered into a bilateral treaty, primarily to return American citizens incarcerated in Mexico to U.S. prisons, but also to return Mexican inmates in the United States to Mexican prisons. Currently, the United States has formed transfer agreements with 76 countries. The benefits of the treaty transfer program include: rehabilitative potential for the inmates by allowing them to be closer to their families (which aids in their reintegration into society upon release), cost savings for the institutions, and possible reduction in prison populations. Additionally, when inmates are transferred, the home countries take custody, unlike when foreign national inmates complete their sentences in the United States and are returned to their home countries without notification.

The treaty transfer program is administered by the Department through the Federal Bureau of Prisons (BOP), the Criminal Division, United States Attorneys' Offices (USAO), and the United States Marshals Service (USMS). The BOP is responsible for explaining the treaty transfer program to foreign national inmates, determining if a current treaty agreement exists for interested inmates and if those inmates are eligible for transfer, and preparing application packets for eligible inmates.<sup>1</sup> The Criminal Division's Office of Enforcement Operations' (OEO) International Prisoner Transfer Unit (IPTU) reviews the application packets of eligible inmates and approves or denies transfer requests based on law enforcement concerns about the inmate, the likelihood of the inmate's social rehabilitation, and the likelihood that the inmate will return to the United States. The USAOs provide IPTU with facts and recommendations to consider when deciding whether to approve inmate

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<sup>1</sup> According to 28 C.F.R. Ch. 5 § 527.44, the BOP is responsible for verifying whether an inmate is eligible to participate in the treaty transfer program.

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transfer requests. Occasionally, USAOs may agree to include their position on treaty transfer as part of a plea agreement prior to a defendant's sentencing. The USMS manages the Justice Prisoner and Alien Transportation System (JPATS), which transports foreign national inmates to hearings, court appearances, and detention facilities.

## **RESULTS OF THE OIG REVIEW**

Few foreign national inmates from treaty transfer nations are transferred to their home countries each year. For example, in fiscal year (FY) 2010, slightly less than 1 percent of the 40,651 foreign national inmates from treaty nations in federal prison were transferred to their home countries. There are several reasons for the low transfer rate, but most significant is the transfer treaty with Mexico, which imposes significant restrictions on the BOP and IPTU that result in few inmates being accepted for treaty transfer consideration. Other reasons for the low transfer rate of inmates include:

- the BOP does not effectively inform inmates about the treaty transfer program because the BOP's insufficient translation services may keep some inmates from fully understanding and participating in the program;
- the BOP sometimes determines incorrectly that inmates are ineligible for the program, in part because its program statement is incomplete and incorrect;
- IPTU does not evaluate inmates' suitability for transfer consistently, which results in disparate treatment of inmates in similar circumstances; and
- factors outside of the Department's control, such as the voluntary nature of the program, other countries' (especially Mexico's) reluctance to take back all of their nationals, and the lack of treaties with some countries that have many nationals in the BOP's inmate population.

Overall, the BOP and IPTU, combined, rejected 97 percent of requests from foreign national inmates because they determined the inmates were ineligible or not suitable for transfer. Specifically, from FY 2005 through FY 2010, the BOP rejected 67,455 of 74,733 (90 percent) transfer requests. IPTU rejected 5,071 of 74,733 (7 percent)

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total requests.<sup>2</sup> Although the majority of the adverse determinations appear to have resulted from treaty restrictions, we believe that more inmates could be considered for transfer.

Additionally, although USAOs have a role in the treaty transfer process and can state their position regarding treaty transfer in plea agreements, we found that Assistant U.S. Attorneys (AUSA) are generally unfamiliar with the program and do not often consider it when negotiating plea agreements with foreign national defendants.

The Department incurred \$15.4 million in unnecessary incarceration costs from FY 2005 through FY 2010 because of the BOP's and IPTU's untimely processing of requests for inmates ultimately transferred.<sup>3</sup> We found the BOP took an average of 209 days to process applications, well beyond the 60-day timeliness standard set forth in its program statement. Similarly, IPTU took an average of 140 days to process applications instead of processing them within 90 days, which is IPTU management's expectation. Although factors outside of the Department's control limit the number of foreign national inmates transferred, the Department could realize savings by reducing processing delays and could achieve potentially significant savings by increasing the participation of eligible inmates in the treaty transfer program.

In the following sections, we discuss in more detail the BOP's ineligibility determinations, the weaknesses in the BOP's program statement, and the BOP's and IPTU's limitations in determining eligibility and suitability of inmates for treaty transfer because of restrictions established in the treaties. We also discuss in more detail the cost incurred by the Department for incarceration of eligible inmates, as well as the recidivism in the United States of transferred inmates.

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<sup>2</sup> The BOP forwarded 7,278 applications to IPTU for consideration. Of these 7,278 applications, IPTU denied 5,071 (70 percent), which represented 7 percent of the total requests from FY 2005 through FY 2010.

<sup>3</sup> The OIG calculated the costs associated with delays in the processing of requests for inmates ultimately transferred using a total average annual incarceration cost of \$25,627 per inmate in 2010. The BOP stated that to calculate the cost associated with delays in processing transfer requests, the OIG should have used an annual marginal cost of \$9,187 per inmate, which would have resulted in \$5.4 million in delay costs. However, we used the total average cost of incarcerating an inmate for 1 year (\$25,261) during the 6-year period of our review because the BOP provides the total annual cost of incarcerating an inmate to the Department as justification for its annual budget submission, rather than "marginal" cost. See Methodology in Appendix VI for more information.

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## **INFORMING INMATES AND DETERMINING TRANSFER ELIGIBILITY**

Although BOP staff told most foreign national inmates about the treaty transfer program when they arrived at the BOP's prisons, 75 percent of the foreign national inmates we interviewed said that they either did not fully understand the explanation of the treaty transfer program or had unanswered questions.<sup>4</sup> Also, written information about the program was not consistently available to inmates. Many of the handbooks that each prison develops and gives to new inmates do not include information about the program. We reviewed 65 of 116 handbooks used by BOP prisons. Of those 65 handbooks we found 28 (43 percent) did not have information regarding the treaty transfer program.<sup>5</sup> Although written program information for inmates has been developed in English, French, and Spanish, it is not uniformly available – 34 of the 65 (57 percent) prisons' handbooks we reviewed were available only in English and Spanish. Further, limited resources are available to translate written and verbal information about the treaty transfer program for inmates who speak languages other than English, French, or Spanish.

When inmates apply for transfer to their home countries, the BOP sometimes incorrectly rejects their requests. Overall, from FY 2005 through FY 2010, foreign national inmates made 74,733 requests to be considered for transfer, and BOP case managers determined that 67,455, (90 percent) of those were ineligible. The BOP told us that 81 percent of the 67,455 requests determined to be ineligible were from Mexican inmates who were incarcerated for immigration violations and thus were not eligible for transfer under the terms of the treaty with Mexico. We acknowledge that a significant portion of the 67,455 requests were from Mexican inmates who were not eligible due to restrictive and limiting criteria established by the treaty with Mexico. However, the data the BOP provided could not fully support the assertion that all of the 81 percent of Mexican inmates interested in treaty transfer were appropriately deemed ineligible. For example, we found that 1,802 of 67,455 (3 percent) of the requests rejected at least in part due to immigration violations were not actually from Mexican citizens subject to

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<sup>4</sup> The BOP's policy requires staff to inform inmates who are foreign nationals about the treaty transfer program soon after they arrive at the prisons where they will serve their sentences.

<sup>5</sup> BOP prisons are not required to have handbooks. Individual prisons create their own handbooks, and the contents vary, including whether and what information is included about the transfer program.

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those treaty restrictions. We discuss this issue in more detail in the Results section of this report.

Also, in a limited sample of inmates' transfer requests rejected by the BOP, we found BOP case managers' determinations were incorrect in 17 percent of the cases.<sup>6</sup> As explained further below, we found three factors that contribute to incorrect determinations: (1) inaccurate information in the BOP's treaty transfer program statement, (2) inadequate training of BOP case managers regarding how to determine eligibility, and (3) inadequate BOP management review of case managers' determinations.

We found that the treaty transfer program statement that BOP case managers rely on to assess inmates' transfer eligibility is incomplete and incorrect. Specifically, (1) the list of treaty nations contained in the program statement is incomplete; (2) the program statement indicates that inmates with appeals in progress are always ineligible, which is incorrect; (3) the program statement does not explain that there are exceptions to the rule that inmates must have at least 6 months remaining on their sentences to be eligible; and (4) information in the program statement regarding whether inmates with committed fines are eligible for treaty transfer is incomplete. The BOP issued an updated program statement in August 2011, but the revised program statement does not address all of the weaknesses we identified. In addition, any future revisions cannot be implemented without union negotiations.

We also found that training for BOP case managers regarding how to determine an inmate's eligibility for the program was inadequate. Of the 31 case managers we interviewed, 26 percent said they did not receive formal training on the treaty transfer program. Also, we reviewed the training materials provided to those case managers that did receive formal training and found they are based on the BOP's program statement and contain the same inaccuracies described above. In addition, BOP management officials' reviews of case managers' eligibility decisions are insufficient. Specifically, of the 18 prison management officials we interviewed, only 2 said they verify the case managers' determinations in cases where the inmates were found eligible, while 16 said they review those application packets only for spelling and grammar mistakes. Further, BOP management's review of ineligible determinations was insufficient.

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<sup>6</sup> We selected for analysis a sample of 52 transfer requests the BOP rejected. Our sample selection methodology was not designed with the intent of projecting our results to the 67,455 requests from inmates determined ineligible for treaty transfer.

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## EVALUATING SUITABILITY FOR TRANSFER

We found that IPTU does not evaluate inmates' transfer applications consistently and does not provide adequate information to inmates about why their applications were rejected. From FY 2005 through FY 2010, IPTU processed 7,278 applications forwarded by the BOP for transfer consideration, and it denied 5,071 (70 percent) of those applications. IPTU denied a portion of the 5,071 applications because it presumed that Mexico would deny these inmates due to restrictions established by Mexico.<sup>7</sup>

Based on interviews with OEO and IPTU officials and analysts, as well as a review of 511 IPTU case files, we found that the way IPTU determines whether inmates are suitable for transfer is inconsistent. Some IPTU analysts did not use the criteria in IPTU guidelines, and when the criteria were used, the analysts did not give the same weight to factors used in evaluating prisoners for transfer. As a result, some inmates' transfer applications were denied, while applications of other inmates in similar circumstances were approved. The IPTU Deputy Chief recognized that IPTU analysts have different perspectives when determining suitability for transfer and said it is the IPTU Chief's responsibility to mitigate the difference when reviewing the analysts' determinations. Despite the IPTU Chief's review, we still found inconsistencies in IPTU's determinations.

IPTU does not provide enough information about the reasons for denying transfers, resulting in inmates not fully understanding why their applications have been denied or what they can do to qualify for transfer in the future. We found that reasons cited in denial letters are often vague and are generally not understood by inmates and BOP case

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<sup>7</sup> According to OEO, at some time in the 1990s, IPTU implemented a process to expeditiously review Mexican inmate requests for transfer. IPTU used the process to anticipate which requests for transfer Mexico would or would not approve. Subsequently, in a 2001 letter to IPTU, Mexico established restrictive criteria that supplemented the criteria established in the bilateral treaty. For example, the bilateral treaty between the United States and Mexico states that a Mexican inmate cannot be considered for treaty transfer if the inmate has previously entered the United States illegally and has been removed or if the inmate is a "domiciliary" of the United States. According to the bilateral treaty with Mexico, "A 'domiciliary' means a person who has been present in the territory of one of the parties for at least five years with an intent to remain permanently therein."

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managers.<sup>8</sup> In interviews with inmates, only 25 percent told us they fully understood the reasons their requests had been denied. In our case file review, we found letters that stated “the inmate is more likely to be approved in the future” if the inmate has “attempted to address those reasons for denial [over] which the inmate has some control.” However, the letters did not explain what the inmates needed to do to make themselves better candidates for transfer, and the letters did not inform inmates that they could write to IPTU for an additional explanation regarding what steps they could take to improve the likelihood of a future transfer. No formal reconsideration process exists for IPTU determinations, so inmates must generally wait 2 years to reapply to the program. However, we found no written basis for the 2-year wait requirement.

### **Role of USAOs**

While USAOs can state their position on treaty transfer in plea agreements, only 6 percent of the cases we reviewed had plea agreements containing language regarding treaty transfer. Our findings were confirmed during interviews with 17 USAO Criminal Chiefs who reported that the AUSAs in their offices rarely or never included treaty transfer recommendations in plea agreements. USAO Criminal Chiefs attributed the absence of treaty transfer language in plea agreements to their concern that inmates would not be required to serve their full sentences and to AUSAs’ unfamiliarity with the treaty transfer program. USAO personnel said they will refer to the *United States Attorneys’ Manual* if they have questions about the treaty transfer program, but we found the manual provides outdated guidance on the program. We also found that AUSAs are provided little or no training on the program.

### **FACTORS OUTSIDE OF THE DEPARTMENT’S CONTROL THAT LIMITED THE NUMBER OF INMATES TRANSFERRED**

Several factors limit the number of inmates that are transferred through the treaty transfer program each year. First, because the program is voluntary, transfers must be requested by the inmates and approved by OEO on behalf of the United States and by the home countries. Second, some countries, especially Mexico, which has the most foreign national inmates in BOP custody, are reluctant to take back

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<sup>8</sup> Law enforcement agencies may ask IPTU not to provide specific information regarding their opposition to transfer if the inmate is involved in an ongoing investigation.



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all of their nationals.<sup>9</sup> Third, treaty nations often are not timely in their approval of transfers that the Department has approved, which limits the number of inmates transferred in a given year. Finally, the United States does not have treaties with some countries that have many nationals in the BOP's inmate population, such as Colombia, Cuba, and the Dominican Republic, which represented 22 percent of all foreign national inmates in 2010.

## **TIMELINESS AND ASSOCIATED COSTS**

We found that the untimely processing of inmates' applications for transfer resulted in unnecessary incarceration costs, but faster processing and increased inmate participation could provide significant cost savings in the future. Overall, inmates' applications for treaty transfer are expected to be processed within 160 days. BOP and IPTU officials told us that the treaty transfer request begins on the date the inmate signs the transfer inquiry form indicating an interest in the program.<sup>10</sup> After the BOP's Central Office receives an application packet from a prison it must then forward the packet to IPTU within 10 days. IPTU does not have timeliness standards for approving or denying transfer requests. However, IPTU management indicated that evaluating a transfer request should take 3 months (90 days). We found that from FY 2005 through FY 2010, the BOP and IPTU, combined, averaged 269 days to evaluate applications for the 1,425 inmate requests approved for transfer, 109 days longer than the expected time of 160 days.<sup>11</sup>

### **Costs Associated with Delays in Processing Transfer Requests**

Delays in processing treaty transfer requests have resulted in additional costs to incarcerate foreign nationals that were ultimately transferred. We found that, from FY 2005 through FY 2010, the combined cost of BOP and IPTU delays related to inmates approved for transfer totaled about \$15.4 million. Approximately \$7.9 million was attributable to the BOP's delays in completing and reviewing application

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<sup>9</sup> See Appendix IX for data on applications, approvals, and transferred inmates by country.

<sup>10</sup> The BOP's revised program statement specifies that the application packet must be forwarded to the BOP's Central Office within 60 days of the inmate's signing of the transfer inquiry form.

<sup>11</sup> From FY 2005 through FY 2010, treaty nations took 288 days, on average, to approve the transfer of their nationals after IPTU had approved the inmates' requests.

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packets, and about \$7.5 million was attributable to IPTU's delays in evaluating inmates' suitability for transfer.

To calculate the cost associated with delays in processing transfer requests, the BOP stated that the OIG should have used an annual marginal cost of \$9,187 per inmate, which the BOP defines as the direct care cost incurred by the BOP to house an inmate and includes the cost of feeding, clothing, and providing medical care for an inmate. However, the BOP reported in the *Federal Register* that the fee to cover the average cost of incarceration for a single inmate was \$24,922 in FY 2007, \$25,895 in FY 2008, and \$25,251 in FY 2009.<sup>12</sup> Further, in FY 2010, the BOP used \$25,627 to justify its annual budget submission to the Department rather than marginal cost. Therefore, we calculated and used the total average cost of incarceration (\$25,261) for the 6-year period of our review rather than the marginal cost proposed by the BOP.<sup>13</sup> Further, if we had used the marginal cost as the BOP proposed, the delay costs for the 1,425 inmates actually transferred during the 6-year period of our review would total \$5.4 million, which we believe is still substantial.

### **Potential Cost Savings and Reduced Recidivism in the United States**

Increasing participation in the treaty transfer program could provide significant savings in incarceration costs. As described earlier, the BOP and IPTU collectively rejected 75,453 (97 percent) of the 77,660 requests from foreign national inmates interested in transferring to their home countries from FY 2005 through FY 2010. Because of the BOP's rate (17 percent in our sample of inmates that the BOP determined ineligible for transfer) of erroneous ineligibility determinations, the potential pool of interested inmates who were incorrectly kept from applying for transfer may be large.<sup>14</sup> Had those inmates' applications been forwarded to IPTU, some would likely have been determined appropriate candidates for transfer. Moreover, as of FY 2010, there were

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<sup>12</sup> Federal Register Annual Determination of Average Cost of Incarceration; A Notice by the Prisons Bureau, 73 Fed. Reg. 33853 (Jun. 13, 2008); 74 Fed. Reg. 33279 (Jul. 10, 2009); 76 Fed. Reg. 6161 (Feb. 3, 2011).

<sup>13</sup> See Appendix VI for more detail on our methodology.

<sup>14</sup> We selected a sample of 52 transfer requests rejected by the BOP for analysis. Our sample selection provided an indication of the accuracy of the BOP's determinations, but was limited by the data available from the BOP. Consequently, these results should not be projected to the full population of 67,455 inmates determined ineligible for treaty transfer.

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39,481 inmates from treaty nations in BOP custody who had never applied for transfer to their home countries, some of whom may not have done so because they do not understand the program. If potentially eligible inmates were better informed, more might apply, though not all would be approved. However, if only 5 percent of those who never previously applied did apply and were transferred to their home countries, 1,974 inmates would be removed from the BOP's prisons, which we estimate could save the BOP up to \$50.6 million in annual incarceration costs.<sup>15</sup>

Transferring more foreign national inmates to their home countries before they complete their sentences could reduce the likelihood of their committing further crimes in the United States. We found that of the foreign national inmates transferred during our review period, only 3 percent later returned to the United States and were re-arrested.<sup>16</sup> In comparison, 73 percent of the criminal aliens released from state or local custody were re-arrested at least once.<sup>17</sup>

## CONCLUSIONS

Although the Department's treaty transfer program is an important program that could help the Department reduce the BOP's prison population, reduce incarceration costs, and facilitate inmates' rehabilitation into society, few inmates are transferred. While we acknowledge that restrictions established in the treaties, specifically those in the bilateral treaty with Mexico, limit the number of inmates the BOP and IPTU may find eligible or suitable for transfer, we believe improvements could be made to increase the number of inmates determined eligible for the treaty transfer program. Specifically, the BOP must improve its ability to effectively communicate with foreign national inmates, continually make inmates aware of the program, and ensure it

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<sup>15</sup> The cost savings estimate is based on an annual incarceration cost of \$25,627 per inmate in 2010. The potential incarceration savings calculation is based on 39,481 inmates because it excludes 1,170 inmates (out of the total 40,651 treaty nation inmates) that did participate in the treaty transfer program in FY 2010.

<sup>16</sup> The rate is based on arrest data for the 1,100 transferred inmates who had records on file in the Federal Bureau of Investigation's Interstate Identification Index, a database of criminal justice information that includes immigration violators.

<sup>17</sup> U.S. Department of Justice Office of the Inspector General, *Cooperation of SCAAP Recipients in the Removal of Criminal Aliens from the United States*, Audit Report 07-07 (January 2007).

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accurately determines whether inmates are eligible for the program according to treaty requirements and IPTU considerations.

We conclude that the criteria used by IPTU analysts to determine an inmate's suitability for transfer are applied inconsistently. We understand that IPTU must evaluate inmates on an individual basis. However, we believe IPTU should consider requiring that its analysts use its guidelines as part of their assessments of prisoners for transfer and that each analyst weigh the criteria similarly. If IPTU does so, we believe inmates will be evaluated as individual cases while still receiving the same consideration as other candidates.

We found that USAOs rarely use language regarding treaty transfer recommendations in plea agreements and are generally unfamiliar with the program. If treaty transfer language was included in plea agreements, more foreign nationals might become aware of and interested in the program.

To reduce unnecessary incarceration costs, we conclude that the BOP and IPTU should consider accountability measures to ensure each case manager and analyst accurately processes application packets in a timely manner. Merely reducing case processing to targeted time frames for the small number of inmates currently being transferred would result in cost savings. Moreover, increasing participation by inmates who have never applied for transfer has the potential to provide significant savings.

Finally, while the OIG recognizes that increasing transfers could result in some increase in the number of prisoners who return to the United States and re-offend, the available data shows that releasing criminal aliens directly into the United States upon completion of their sentences represents a far greater risk of recidivism.

## **RECOMMENDATIONS**

In this report, we make 14 recommendations to the BOP, Criminal Division (IPTU), and the Executive Office for United States Attorneys to help the Department improve its efforts to effectively manage the treaty transfer program. For example, we recommend that the BOP and IPTU coordinate to ensure that the BOP's guidance accurately reflects eligibility criteria based on treaty requirements and IPTU considerations. To reduce erroneous determinations and ensure denials are limited to cases where transfer is inappropriate, we recommend the BOP establish a process for reviewing eligibility determinations made by case managers to ensure their accuracy. In addition, to ensure delays in processing

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treaty transfer requests are minimized, we recommend that the BOP and IPTU establish reporting requirements to measure the timeliness for processing application packets. We also recommend that the USAOs provide AUSAs with a sample paragraph about treaty transfer that the AUSAs may include in their plea agreements.

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## INTRODUCTION

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The Office of the Inspector General (OIG) examined whether the Department of Justice (Department) is effectively managing the International Prisoner Transfer Program (treaty transfer program) for foreign national inmates. Specifically, we examined the roles of the Department's components involved in the program, the selection of inmates to be transferred, the timeliness of the process, the costs associated with the program, and the recidivism in the United States of foreign national inmates transferred.

The treaty transfer program began in 1977 when the United States and Mexico entered into the bilateral *Treaty on the Execution of Penal Sentences*, primarily to return American citizens incarcerated in Mexico to U.S. prisons, but also to return Mexican inmates in the United States to Mexican prisons. Since then, the United States has signed 11 other bilateral treaties and 2 multilateral conventions. In all, through these treaties and conventions, the United States has formed transfer agreements with 76 countries.<sup>18</sup> Prisoner transfer treaties are negotiated principally by the Department of State, and the transfer program is administered by the Department.<sup>19</sup>

The stated purpose of the treaty transfer program is to “relieve some of the special hardships that fall upon offenders [foreign nationals in the United States and American citizens abroad] incarcerated far from home, and to facilitate the rehabilitation of these offenders.”<sup>20</sup> Transfers can help inmates rehabilitate by allowing them to be closer to their families and cultures and may make it easier for them to reintegrate into society when they are released.<sup>21</sup>

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<sup>18</sup> See Appendix I for a list of countries and territories that have reciprocal transfer agreements with the United States.

<sup>19</sup> 18 U.S.C. §§ 4100 – 4115 gives the Attorney General the authority to act on behalf of the United States in regard to inmate transfer treaties. These provisions are applicable only when a transfer treaty is in place, and they apply to transfers of offenders to and from a foreign country pursuant to the treaty.

<sup>20</sup> Office of Enforcement Operations, Criminal Division, Department of Justice, “International Prisoner Transfer Program,” <http://www.justice.gov/criminal/oeo/iptu/> (accessed August 30, 2011).

<sup>21</sup> For example, the bilateral treaty with Mexico states: “The United States of America and the United Mexican States, desiring to render mutual assistance in combating crime insofar as the effects of such crime extend beyond their borders and to provide better administration of justice by adopting methods furthering the offender’s social rehabilitation, have resolved to conclude a Treaty on the execution of penal sentences.”



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Other potential benefits of transferring prisoners to their home countries include the cost savings from no longer having to imprison the transferred inmates and a reduction of the population of overcrowded Federal Bureau of Prisons (BOP) facilities. Also, transferring inmates to their home countries can reduce the cost and staff time that the BOP incurs in adapting practices and processes to those inmates' languages, customs, cultures, and dietary needs.

In addition, according to a 1997 report on the effectiveness of prisoner transfer treaties, the treaties have helped relieve the diplomatic and law enforcement tensions that may arise when one country has imprisoned a significant number of another country's citizens.<sup>22</sup> Transfers also are an alternative to traditional deportation proceedings at the completion of inmates' sentences and have the advantage of providing the home countries with more information on the inmates than is provided through deportation proceedings.<sup>23</sup>

The BOP is responsible for the custody and care of approximately 210,000 federal offenders who are housed in 116 BOP-operated facilities and in 14 privately managed or community-based facilities under contract with the BOP.<sup>24</sup> Of these inmates, about 1 in 4 is a foreign national (a total of approximately 52,000). Combined, in fiscal year (FY) 2009, they cost the BOP \$1.3 billion to house.<sup>25</sup> Most of these inmates serve their full sentences in the BOP's prisons, but each year, an average of 241 (less than 1 percent) inmates are returned through the treaty transfer program to their home countries to complete their sentences in prisons there.

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<sup>22</sup> *Report of the Secretary of State and the Attorney General on the Use and Effectiveness of the Prisoner Transfer Treaties with the Three Countries With the Greatest Number of Nationals Incarcerated in the United States (Mexico, Canada, and the United Kingdom)*, 1997.

<sup>23</sup> When foreign national inmates complete their sentences in U.S. prisons, they normally are referred to the Department of Homeland Security's Immigration and Customs Enforcement for deportation or removal proceedings. If the former inmates are ordered removed, they are returned without notification to their home countries.

<sup>24</sup> The BOP's website, <http://www.bop.gov/about/index.jsp> (accessed August 30, 2011).

<sup>25</sup> Government Accountability Office, *Criminal Alien Statistics: Information on Incarcerations, Arrests, and Costs*, GAO-11-187 (March 24, 2011). According to the report, the cost to incarcerate criminal aliens in BOP facilities increased by about 15 percent, from about \$1.1 billion in FY 2005 to about \$1.3 billion in FY 2009, due to increases in both the number of criminal aliens incarcerated and the costs to incarcerate inmates in BOP facilities.

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## BACKGROUND

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In this section, we first discuss the primary Department components, other organizations, and foreign national inmates involved in treaty transfer. We then discuss international treaties and transfer requirements governing treaty transfer, and national and Department policies governing treaty transfer.

### **Primary Department Components, Other Organizations, and Foreign National Inmates Involved in Treaty Transfer**

The Department's treaty transfer program involves four components: the BOP, the Criminal Division, United States Attorneys' Offices (USAO), and the United States Marshals Service (USMS). In addition, the foreign countries and their embassies' consulates and foreign national inmates have a role in the process. The following paragraphs briefly describe each organization's role in the process. See Appendix II for a detailed explanation of the treaty transfer process.

#### The Federal Bureau of Prisons

BOP case managers are responsible for explaining the treaty transfer program to inmates and for determining if inmates interested in the program are eligible to apply.<sup>26</sup> In FY 2010, there were 1,051 case managers in BOP prisons to assist approximately 210,000 inmates in the general population, including approximately 52,000 foreign national inmates.<sup>27</sup> Case managers we interviewed averaged a caseload of 154 inmates. For inmates interested in

#### **Application Packet Contents**

- Transfer Inquiry Form (BP-S297),
- Notice Regarding International Prisoner Transfer (BP-S298),
- Authorization to Release Confidential Information (BP-S301),
- Case Summary,
- Pre-/Post-Sentence Investigation Report,
- FBI Fingerprint Card with current photograph of inmate,
- Current sentence computation,
- Certified Judgment and Commitment, and
- Proof of citizenship.

Source: BOP Program Statement 5140.39. See Appendix III for the full text.

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<sup>26</sup> The BOP determines an inmate's eligibility for treaty transfer based on minimum requirements established within treaties such as length of sentence, pending appeals, and whether the inmate is from the treaty nation.

<sup>27</sup> Case managers' additional responsibilities include intake screenings; initial classification; custody classifications (determining an inmate's security level); program reviews (every 90 or 180 days); sentence computation; halfway house placement; release preparation; relocation; educational, recreational, and religious programming; resolving fines with the courts; victim/witness notification; inmate discipline; inmate central file reviews/audits; inmate visitation; relieving Correctional Officers; acting as a team or unit supervisor; and conducting training.

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applying for the program, case managers assemble application packets (see text box above). Case managers send the application packets to the BOP's Central Office. The BOP's Central Office then forwards the application packets to the Criminal Division's International Prisoner Transfer Unit (IPTU). If the Criminal Division approves an inmate for transfer, the BOP helps coordinate the transfer and transports the inmate to a departure institution, where an approved inmate is transferred for return to his or her country of citizenship.<sup>28</sup>

### The Criminal Division

The Criminal Division's Office of Enforcement Operations (OEO) determines the suitability of inmates for transfer based on factors such as law enforcement concerns about the inmates, the likelihood of the inmates' social rehabilitation, and the likelihood the inmates will return to the United States.<sup>29</sup> Within OEO, the International Prisoner Transfer Unit reviews the application packets and chooses to approve or deny the inmates' requests for transfer after considering those factors above. Additionally, IPTU responds to inquiries from inmates or from inmates' representatives, such as their attorneys or family members.<sup>30</sup> IPTU also communicates with, meets, and trains officials from countries having prisoner transfer treaties with the United States. In addition, IPTU coordinates consent verification hearings at which a U.S. Magistrate Judge determines whether an inmate understands the effect of the transfer and confirms that the inmate consents to transfer. IPTU then helps coordinate the transfer of the inmates to foreign authorities. During our fieldwork, IPTU had 13 full-time employees, including a Chief, Deputy Chief, 5 staff attorneys, 1 program analyst, 4 paralegal specialists, and 1 secretary.<sup>31</sup> Unpaid

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<sup>28</sup> According to 28 C.F.R. § 527.41, "a departure institution is a BOP institution to which an eligible inmate is finally transferred for return to his or her country of citizenship." The BOP uses an inmate's country of citizenship to determine inmate eligibility. However, both IPTU and the treaties specify that the inmate's country of nationality determines their appropriateness for transfer. This information is only available from the treaty nations.

<sup>29</sup> See Appendix IV for more information on factors used for determining suitability.

<sup>30</sup> IPTU requires the inmate to sign a *Privacy Act* waiver before IPTU communicates with representatives, family, or friends.

<sup>31</sup> From FY 2005 through FY 2010, IPTU had nine staff members reviewing application packets. These staff members also had additional responsibilities such as reviewing state cases for treaty transfer; responding to inquiries about transfers from the inmate and from the inmate's attorney, friends, and family members; communicating with, meeting, and training officials from countries having inmate transfer relationships with the United States; and coordinating the transfer of the inmates to foreign authorities. In addition, some staff are responsible for handling fewer cases than others because of the volume of other work that they are assigned. For example, three staff members have a caseload that is half of the other

(Cont'd.)

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undergraduate and law school interns also rotate through the office on temporary assignments of 10 to 12 weeks and, under the supervision of IPTU attorneys, assist with reviewing and processing transfer requests. In addition, there are usually one to three part-time students who assist with administrative matters.

### The United States Attorneys' Offices

The USAOs are responsible for providing to IPTU facts and recommendations to consider in deciding whether to approve or deny an inmate's request to be transferred.<sup>32</sup> When determining the suitability of an inmate, IPTU seeks information from the prosecuting USAO, including whether the inmate has any pending appeals or collateral attacks on the inmate's conviction or sentence.<sup>33</sup> USAOs may support, oppose, or take no position regarding an inmate's transfer request when responding to IPTU. A USAO can submit additional comments, documentation, or information to support its views on a requested transfer. Assistant U.S. Attorneys (AUSA) have the option to attend consent verification hearings.

USAOs may also include a recommendation regarding treaty transfer as part of a plea agreement prior to a defendant's sentencing. However, a USAO cannot guarantee that IPTU will approve the inmate's transfer in return for a guilty plea. According to the *United States Attorneys' Manual* (USAM), a plea agreement should state clearly that the USAO does not speak for the Department when it supports or does not oppose an inmate transfer.

### The United States Marshals Service

The USMS manages the Justice Prisoner and Alien Transportation System (JPATS), which transports sentenced inmates in BOP custody to hearings, court appearances, and detention facilities. On average, JPATS completes over 350,000 inmate or alien movements a year through a network

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analysts due to these other responsibilities. In addition, one analyst reviews only cases of Americans incarcerated in foreign countries requesting transfer to the United States. OEO reported that as of November 9, 2011, IPTU had 12 full-time employees, including 4 staff attorneys, with 2 additional attorneys as supervisors, 1 secretary, 1 program analyst, and 4 paralegals.

<sup>32</sup> Section 736 of the *Criminal Resource Manual* states that the USAOs must provide any relevant facts and recommendations that are requested by IPTU no later than 3 weeks from the date the facsimile transfer request was sent from IPTU.

<sup>33</sup> "Collateral attack" is a broad term used to refer to a motion, other than a direct appeal, filed by a prisoner seeking to vacate his conviction or sentence.

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of aircraft, cars, vans, and buses. Ground transportation is usually provided by the BOP, the Department of Homeland Security's Immigration and Customs Enforcement (ICE), and the USMS. Although JPATS transports inmates approved for treaty transfer to consent verification hearings and departure institutions, it does not transport them to their home countries. Foreign authorities receive inmates approved for transfer at BOP departure institutions and transport them.

### Foreign Countries and Their Embassies' Consulates

Embassies' consulates and the foreign government entity identified as the central authority for prisoner transfer matters can assist inmates with the transfer program. IPTU notifies those authorities when it determines that transfers are or are not appropriate. Foreign authorities then make a decision whether to approve or deny transfer. The foreign authorities may also arrange for consular officials to interview the inmates who have applied to the program. Foreign authorities provide escorts to accompany inmates approved for transfer from BOP departure institutions to the inmates' home countries.

### Foreign National Inmates in BOP Custody

From FY 2005 through FY 2010, the BOP's inmate population ranged from 175,884 to 195,649. During that time, foreign national inmates from treaty nations represented, on average, 19 percent of the BOP's total inmate population. Table 1 presents, by year, the total number of BOP inmates, the number of U.S. citizen inmates, the number of foreign national inmates from treaty nations, and the number of foreign national inmates from non-treaty countries.

**Table 1: The BOP's Foreign National Inmate Population  
from FY 2005 through FY 2010**

<b>Fiscal Year</b>	<b>BOP Inmates*</b>	<b>U.S. Citizen Inmates</b>	<b>Foreign National Inmates from Treaty Nations</b>	<b>Foreign National Inmates from Non-Treaty Nations</b>
2010	195,649	143,209	40,651	11,789
2009	194,393	141,262	38,385	14,746
2008	188,584	137,232	36,413	14,939
2007	187,882	136,550	35,769	15,563
2006	179,527	131,129	32,686	15,712
2005	175,884	124,534	32,912	17,438

\* The table does not reflect missing citizenship data.

Source: BOP.

As of May 2011, there were 26,281 foreign national inmates from treaty nations that had not applied to the treaty transfer program. The most common offenses among those inmates were drugs (51.7 percent), immigration (39.9 percent), and weapons or explosives (2.7 percent) offenses. The other 5.7 percent included fraud, bribery, and extortion; burglary and larceny; homicide and aggravated assault; sex offenses; robbery; court and corrections offenses; continuing criminal enterprise; counterfeiting and embezzlement; and national security offenses. The most common security level among those inmates was low (71.6 percent), followed by medium (23.5 percent), high (4.9 percent), and minimum (0.1 percent). The most common country of citizenship was Mexico (85.4 percent), followed by Honduras (3.8 percent), El Salvador (3.6 percent), Guatemala (1.9 percent), and Canada (1.0 percent). The remaining 4.3 percent were citizens of 166 other countries.

The offense category, security level, and country of citizenship of those currently incarcerated by the BOP appear similar to those of inmates ultimately transferred. Further, for those inmates that chose to apply for treaty transfer, there is little difference between the offenses for those inmates approved and transferred, and those inmates denied transfer by IPTU. For example, the most common type of offense for approved and transferred inmates was drug offenses (92 percent), followed by burglary or larceny (2 percent); fraud, bribery, and extortion (2 percent); and weapons or explosives offenses (1 percent). Sex offenses, immigration, robbery, counterfeit or embezzlement, continuing criminal enterprises, and court or correction offenses each made up less than 1 percent of the offenses for those inmates transferred. For those inmates whose requests were denied, drug offenses were also the most common (84 percent), followed by fraud, bribery, and extortion (3 percent);

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immigration (3 percent); weapons or explosives (3 percent); burglary or larceny (3 percent); and sex offenses (1 percent). Homicide, continuing criminal enterprise, robbery, counterfeiting or embezzlement, and court or correctional offenses (such as possessing contraband in prison) each represented less than 1 percent of those inmates denied transfer.

In addition, there is little difference between the security level for those inmates approved and transferred, and those inmates denied transfer by IPTU. The most common security level for transferred inmates was low (97 percent), followed by medium (2.6 percent). The remaining 0.4 percent were minimum or high security inmates. For inmates whose requests were denied, the most common security level was also low (87 percent), followed by medium (10 percent). High security inmates represented 2 percent of the inmates denied, and minimum security inmates represented less than 1 percent of inmates denied transfer.

### **International Treaties, U.S. Laws and Regulations, and Department Policies Governing Treaty Transfer**

International prisoner transfers were established through treaties that govern the legal requirements for transferring foreign nationals to their home countries to serve the remainder of their sentences. In 1977, the *Treaty on the Execution of Penal Sentences Between the United States and Mexico* provided that any Mexican citizen jailed in the United States could be sent, with his consent, back to Mexico to serve the remainder of his sentence; and any United States citizen jailed in Mexico could, with his consent, return to the United States to serve the remainder of his sentence. In 1983, the United States signed the multilateral *Council of Europe Convention on the Transfer of Sentenced Persons* (the COE Convention). The COE Convention took effect in 1985, allowing the United States and 63 countries to transfer offenders to and from their respective countries and territories.<sup>34</sup> In addition, in May 2001, *Inter-American Convention on Serving Criminal Sentences Abroad* (the OAS Convention) took effect, allowing the United States and 16 other countries to transfer offenders to and from their countries. Also, OAS

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<sup>34</sup> COE Convention countries include: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russia, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Turkey, Ukraine, United Kingdom, Australia, Bahamas, Bolivia, Canada, Chile, Costa Rica, Ecuador, Honduras, Israel, Japan, South Korea, Mauritius, Mexico, Panama, Tonga, Trinidad and Tobago, and Venezuela. Source: <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=112&CM=8&DF=&CL=ENG> (accessed November 16, 2011).

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Convention countries may have a transfer relationship with the United States either through the COE Convention or a bilateral transfer treaty.<sup>35</sup>

Congress established the treaty transfer program in Pub. L. No. 95-144, and 18 U.S.C. § 4102 gives the Attorney General the authority to transfer offenders, but eligibility for transfer may also be affected by a habeas petition under 28 U.S.C. § 2255. Other provisions in the Code of Federal Regulations at 28 C.F.R. Chapter 1 and Chapter 5 establish the BOP's role regarding foreign national inmates and prescribe the BOP's and Criminal Division's responsibilities.

The BOP and IPTU have policy and guidelines on the treaty transfer program's procedures. For example, a December 2009 program statement governs the BOP's administration of the treaty transfer program, including informing inmates about the program and determining an inmate's eligibility for treaty transfer. IPTU's 2003 guidelines set forth a number of factors that are considered in determining the suitability of prisoners for transfer, such as the likelihood of social rehabilitation, law enforcement concerns, and the likelihood that the inmate will return to the United States. The Department has also issued guidance for the treaty transfer process in the form of a 2002 Criminal Division memorandum, which established a 3-week time frame for AUSAs to respond to IPTU requests for information, and the USAM, which contains general policies and USAO procedures relevant to the treaty transfer program.

See Appendix V for more information about international treaties, U.S. laws and regulations, and Department policies governing treaty transfer.

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<sup>35</sup> OAS Convention countries include: Belize, Brazil, Canada, Czech Republic, Chile, Costa Rica, Ecuador, El Salvador, Guatemala, Kingdom of Saudi Arabia, Mexico, Nicaragua, Panama, Paraguay, Uruguay and Venezuela. Source: <http://www.oas.org/juridico/english/sigs/a-57.html> (accessed November 16, 2011).



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## PURPOSE, SCOPE, AND METHODOLOGY OF THE OIG REVIEW

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### **Purpose**

Our review examined whether the Department is effectively managing the International Prisoner Transfer Program for foreign national inmates. Specifically, we examined:

- the BOP's explanation of the program to foreign national inmates,
- BOP and IPTU guidance used to determine eligibility and suitability for the program,
- the timeliness of the processing of transfer requests by the BOP and IPTU,
- the transport of approved inmates throughout the process by the USMS,
- the costs associated with the program, and
- the recidivism in the United States of transferred inmates.

### **Scope and Methodology**

Our review encompassed the Department's authority and processes to transfer foreign national offenders in compliance with the conditions of the treaties between the United States and the inmates' countries of citizenship from FY 2005 through FY 2010. We examined the roles of the BOP, Criminal Division, the USAOs, and the USMS in the international prisoner transfer process. We also examined the role of the other nations' embassies or ministries of justice in the transfer process. Our review did not address the transfer of U.S. citizens imprisoned in other countries back to the United States for incarceration in BOP institutions or the transfer of foreign nationals incarcerated in state prisons in the United States.<sup>36</sup>

Our fieldwork, which was conducted from July 2010 through April 2011, included interviews, data collection and analyses, and document reviews. A detailed description of the methodology of our review is in Appendix VI.

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<sup>36</sup> From 2005 through 2010, 435 U.S. citizen prisoners were transferred from other countries to the United States.

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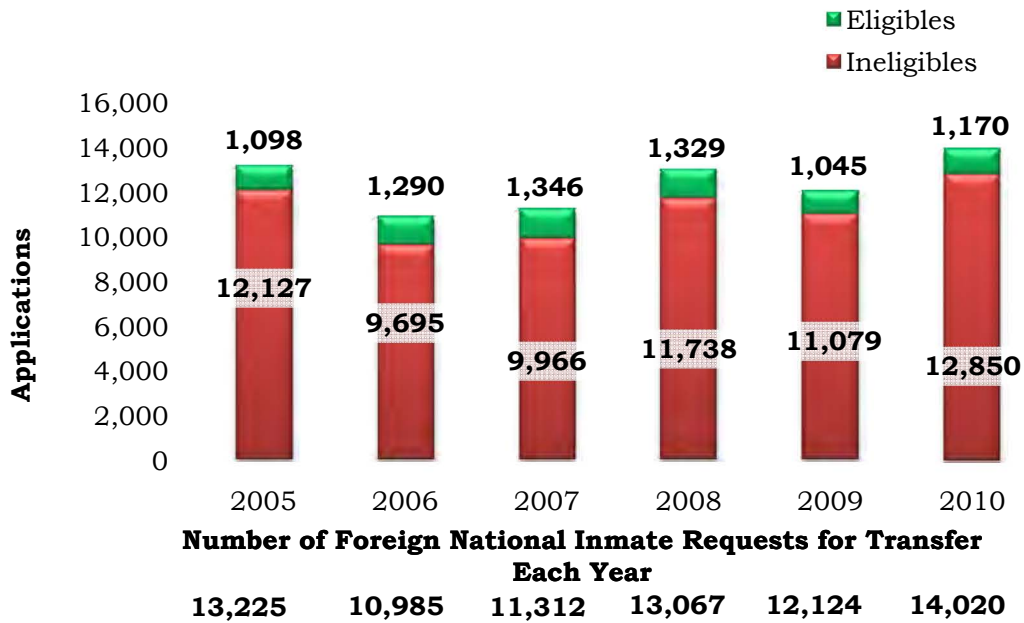
## RESULTS OF THE REVIEW

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**Few foreign national inmates from treaty transfer nations are approved for transfer. From FY 2005 through FY 2010, the BOP and IPTU made determinations regarding eligibility and suitability in response to 74,733 requests for transfer by foreign national inmates from treaty nations. Of those determinations, 97 percent were found not appropriate for transfer by either the BOP or IPTU.**

Few foreign national inmates from treaty transfer nations are approved for transfer. From FY 2005 through FY 2010, the BOP determined that inmates requesting transfer to their home countries were ineligible for transfer in 67,455 of 74,733 cases (90 percent) and determined that 7,278 requests (10 percent) were eligible for treaty transfer consideration. The BOP has stated that 81 percent of Mexican inmates interested in treaty transfer were not eligible because they were incarcerated for immigration violations. The bilateral treaty between the United States and Mexico states that Mexican inmates are not eligible for treaty transfer if they are incarcerated for immigration offenses. We acknowledge that a majority of the 81 percent were correctly determined to be ineligible because of restrictive and limiting criteria established by treaty. However, the data the BOP provided could not fully support the assertion that all of the 81 percent of Mexican inmates interested in treaty transfer were appropriately deemed ineligible. We discuss this in more detail below. Figure 1 shows the number of requests for transfer determined eligible and ineligible by the BOP from FY 2005 through FY 2010.

**Figure 1: The Number of Requests for Transfer Determined Eligible and Ineligible by the BOP, FY 2005 through FY 2010**



Source: BOP.

The BOP forwarded to IPTU the 7,278 applications that it determined eligible for transfer consideration. IPTU considered those applications and denied 5,071 (70 percent). Similar to the BOP, a portion of IPTU’s suitability determinations are the result of criteria established by the treaties. We also discuss this in more detail below. Figure 2 shows the number of total applications forwarded to IPTU by the BOP from FY 2005 through FY 2010, and the number of those applications that were approved and denied by IPTU. As Figure 2 shows, there were 2,207 total approvals (30 percent) and 5,071 total denials (70 percent) during that period.





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describes IPTU's evaluation of inmates' suitability for treaty transfer, as well as USAOs' involvement in the treaty transfer program. Chapter III describes factors outside of the Department's control that limit the number of inmates transferred. Chapter IV discusses the timeliness of the BOP's and IPTU's processing of treaty transfer requests and the costs associated with delays incurred by the BOP and IPTU, as well as recidivism in the United States by transferred inmates.

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## CHAPTER I: INFORMING INMATES AND DETERMINING TRANSFER ELIGIBILITY

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**Although it appears that the BOP is informing foreign national inmates about the treaty transfer program, language barriers, especially for inmates who do not speak English, French, or Spanish, may be keeping some inmates from fully understanding and participating in the program. Also, the BOP does not routinely inform inmates whose transfer requests have been previously denied that they are eligible to reapply for treaty transfer, and it does not remind inmates who previously indicated they were not interested in the program that they may remain eligible for it. Finally, we found that BOP case managers are not correctly determining inmate eligibility for the program in many instances, in part because the BOP program statement they rely on for guidance is incomplete and incorrect.**

**Although it appears that the BOP is informing foreign national inmates about the treaty transfer program, most inmates do not fully understand the program.**

According to 28 C.F.R. § 527.43, “the BOP case manager of an inmate who is a citizen of a treaty nation shall inform the inmate of the treaty [program] and provide the inmate with an opportunity to inquire about transfer to the country of citizenship.” In addition, BOP policy requires staff to inform inmates who are foreign nationals about the treaty transfer program soon after they arrive at the prisons where they will serve their sentences.<sup>38</sup> As discussed below, we found that in most instances inmates were informed of the program, but many did not fully understand it.

In most instances, the BOP is informing the inmates about the program.

The BOP’s program statement states that inmates are to be informed about the program during institution orientation and that “ordinarily” institution orientation will be completed within 4 weeks of an

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<sup>38</sup> BOP Program Statement 5140.39, Transfer of Offenders to or from Foreign Countries.

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inmate's arrival at a prison.<sup>39</sup> The Assistant Administrator, Correctional Programs Division, told us that BOP staff also inform inmates about the program at their initial classification sessions that establish the work and other activities the inmates will engage in at the prison. According to BOP Program Statement 5322.12, Inmate Classification and Program Review, the initial classification meeting must occur within 28 calendar days of an inmate's arrival. The meeting includes the inmate's case manager, who is responsible for preparing the transfer application if the inmate wishes to apply to the treaty transfer program.

During our site visits, we asked BOP staff, including associate wardens, unit managers, case management coordinators, and case managers, when they informed inmates of the transfer program. All 49 staff members we interviewed said they informed the inmates of the treaty transfer program during orientation meetings or during the initial classification session. We also asked 30 foreign national inmates when a BOP representative first discussed the program with them.<sup>40</sup> Twenty-eight inmates told us they either were already aware of the treaty transfer program when they arrived at the institution and immediately expressed their interest or that they were informed of the program during the orientation meetings. In addition, 20 of the 28 said they were first told about the program at initial classification meetings or program reviews.<sup>41</sup> The two remaining inmates told us that BOP staff had never informed them about the program.

We also found that some, but not all, of the handbooks that prisons give to newly arrived inmates include information about the treaty transfer program.<sup>42</sup> We reviewed 65 of 116 handbooks used by

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<sup>39</sup> BOP Program Statement 5290.14, Admission and Orientation Program, does not specify that the treaty transfer program is to be discussed at admission and orientation (A&O). However, the program statement does require that "the A&O program will include, at a minimum, all areas identified on the Institution (B-S518) and Unit (BP-S597) Checklists." BP-S518, Institution Admission and Orientation Checklist, includes "Treaty Transfer of Offenders to Foreign Countries" as one of the programs that is required to be discussed at A&O meetings.

<sup>40</sup> We interviewed 36 inmates, but 6 of them did not respond to our question about when they first learned of the transfer program.

<sup>41</sup> BOP Program Statement 5322.12, Inmate Classification and Program Review, states that during program reviews the inmate's progress in recommended programs is reviewed and new programs are recommended based upon skills the inmate has gained during incarceration.

<sup>42</sup> BOP prisons are not required to have handbooks.



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BOP institutions and found 37 (57 percent) had information regarding treaty transfer, while 28 (43 percent) did not. The handbooks that included information about the transfer program varied in the amount of information provided. For example, some handbooks had specific information regarding eligibility requirements, while others had only a general statement to the effect that inmates who were foreign nationals might be eligible to transfer to their home countries to serve the remainder of their sentences.

We also found that 34 of 65 (52 percent) of the prison handbooks we reviewed were available in Spanish, but none was available in other languages. Overall, we found that the BOP is generally informing inmates about the treaty transfer program, but the information is provided in various ways and in varying levels of detail, leaving some inmates not fully informed about the program. We believe that prison handbooks can serve as another means to fully explain the treaty transfer program to interested inmates.

Language barriers may keep inmates from understanding the program.

We found that even when inmates are provided information about the treaty transfer program, they often do not fully understand it because of language barriers. Case managers told us that the BOP has trouble addressing language barriers that exist for inmates, especially those who do not speak English, French, or Spanish, the only languages for which the BOP has translated some of its documents for the treaty transfer program. As one unit manager put it, “BOP has a translation problem.” Many of the inmates we interviewed told us they did not fully understand the program. Of the 36 foreign national inmates we interviewed, 27 (75 percent) said that they either did not fully understand the treaty transfer program after they were informed about it or that they had unanswered questions about the program after talking to their case managers. For example, one inmate told us that he prefers to communicate with a BOP correctional counselor instead of his case manager because the counselor speaks Spanish. However, counselors are not responsible for explaining the treaty transfer program to inmates and may not be knowledgeable of the program. Another inmate who spoke Spanish told us that his case manager discussed the treaty transfer program with him in English and he did not understand. He further stated that nothing was explained to him in Spanish. Overall, the majority of the inmates we interviewed were citizens of Spanish-speaking countries.

We examined the documents the BOP provides to inmates when they arrive at an institution and found they often are not provided in a language spoken by the inmate. To request a transfer, an inmate must sign a transfer inquiry form (BP-S297) that states that the inmate understands key aspects of the program (see the text box and Appendix VII). The BOP has French and Spanish versions of the form as well as an English version. However, we found that the BOP does not consistently provide the transfer inquiry form to inmates in their preferred languages. Of the 31 case managers we interviewed during our site visits, only 10 (31 percent) knew that the form was available in French and Spanish. Nine inmates also told us that they would have preferred the transfer inquiry form in a language other than English. One of these inmates stated that the Spanish form was not available, so he had to sign the English form and only understood four lines of it.

According to the BOP's Senior Deputy Assistant Director, Correctional Programs Division, less than

2 percent of the BOP's population speaks a language other than English, French, or Spanish, meaning a very small number of the BOP's inmates may have a language barrier. We believe that providing program information in three languages is helpful for most of the BOP's foreign national inmates, but it does not remove the language barrier for all of the inmates. In the years from 2005 through 2010, the BOP had between 747 and 929 inmates from treaty nations that were not

#### **Transfer Inquiry Form**

By signing the transfer inquiry form, inmates:

- indicate an interest in being transferred to continue serving the sentences imposed by the United States to their countries of citizenship,
- understand that an inquiry begins to obtain data before the actual request for transfer and is not binding upon either the government or the inmates,
- understand that they will need to notify their consulates in order for their home countries to verify citizenship and that failure to make contact may significantly delay or prevent a favorable decision on their transfer requests,
- understand that upon approval for transfer, they will be required to attend verification hearings before a U.S. Magistrate Judge,
- indicate the language preference for their verification hearings and understand an interpreter will be available, if necessary, and
- understand that they are not eligible to apply for transfers if they have an appeal or collateral attack pending, but that they may apply when the appeal or collateral attack process has been concluded.

Source: BOP transfer inquiry form (BP-S297).

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English-, French-, or Spanish-speaking nations.<sup>43</sup> Those inmates may not have been able to understand the forms or other program information available from the BOP in any of the languages in which they are available.

The BOP's program statement states that "any inmate not fluent in English shall be advised of the availability of translated documents." Further, the warden of each prison is responsible for establishing "a readily available source (or sources)" for obtaining translations when needed.<sup>44</sup> These sources can include community volunteers, local colleges, and staff. According to the Senior Program Specialist who manages the transfer program, BOP staff may ask other staff members who speak an inmate's language to explain the documents or may ask for translations from sources outside of the prison, such as consulates. At the prisons we visited, we found translation assistance was limited, and the sources varied (see Table 2).

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<sup>43</sup> BOP data did not allow for inmate-specific analysis so we could not determine how many inmates are not fluent in English or what languages inmates speak. The following countries and territories do not have English, Spanish, or French as their official language but had inmates from treaty nations and territories represented in BOP custody from FY 2005 through FY 2010: Albania, Armenia, Aruba, Azerbaijan, Bosnia and Herzegovina, Brazil, Bulgaria, Croatia, Czech Republic, Denmark, Finland, Germany, Greece, Hungary, Iceland, Israel, Italy, Japan, South Korea, Latvia, Lithuania, Macedonia, Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russia, Serbia, Sweden, Thailand, Tonga, Turkey, and Ukraine.

<sup>44</sup> BOP Program Statement 1505.03, Language Translation Used in Official Documents. This program statement covers written translation only.

**Table 2: Examples of Translation Services Prisons Used**

<b>Prison and Countries of Origin for Most of the Foreign National Inmates</b>	<b>Languages Spoken by Staff Other than English</b>	<b>Other Available Translation Sources Used by the Prison</b>
<b>Federal Correctional Institution Allenwood:</b> Canada, Mexico, Netherlands, United Kingdom, and Venezuela	Mandarin, Italian, German, and Spanish	<ul style="list-style-type: none"> <li>• A local university</li> <li>• Babel Fish (a free Internet-based translation service)</li> <li>• Other inmates if the inmate trusted them or no staff was available</li> <li>• Telephone translation service staff can call while the inmate listens</li> </ul>
<b>Correctional Institution McRae:</b> Bahamas, Venezuela, Canada, Mexico, Honduras, Ecuador, and Netherlands	Chinese, Japanese, and Spanish	<ul style="list-style-type: none"> <li>• Telephone translation service staff can call while the inmate listens</li> <li>• Other inmates if the conversations are not sensitive</li> <li>• Online translation services</li> </ul>
<b>Federal Correctional Institution Safford:</b> Mexico, Canada, Tonga, South Korea, and Peru	Spanish	<ul style="list-style-type: none"> <li>• Telephone translation service staff can call while the inmate listens</li> <li>• Other inmates known to the inmate</li> </ul>
<b>Federal Correctional Institution Petersburg:</b> Mexico, Canada, Bahamas, Panama, Spain, Italy, Nicaragua, and Venezuela	German and Spanish	<ul style="list-style-type: none"> <li>• Google Translate (a free Internet-based translation service)</li> <li>• Other inmates known to the inmate</li> <li>• Telephone translation service staff can call while the inmate listens</li> </ul>

Note: We did not collect information on language capabilities at Federal Correctional Institution La Tuna because we visited primarily to observe a consent verification hearing.

Source: BOP interviews.

Officials at the BOP’s Central Office said the BOP had a translation services contract that provides interpreters to translate for staff and inmates over the telephone. However, we found the contract was for monitoring the communications of terrorist and high-risk inmates, not translation services to assist BOP staff in communicating with inmates. We did not find any other translation contracts available to support translations for treaty transfer applicants.

Case managers told us that while document translation and telephone translation services meet some needs, they need foreign

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language training. BOP officials stated that foreign language training is provided only for the Spanish language. From FY 2005 through FY 2010, 55 case managers received Spanish language training. As of August 2010, there were 1,051 case managers. In addition, in response to a working draft of this report, the BOP stated that providing foreign language training to staff at all BOP institutions for an inmate population of less than 2 percent (that is, the inmates who do not speak English, French, or Spanish) is not cost effective.

Some translating is done informally by the inmates themselves. Six BOP case managers told us, and inmates confirmed, that inmates sometimes translate for each other, but the translations may be vague or inaccurate. For example, one inmate translated a transfer denial letter as saying the transfer had been denied because the inmate was “too important.” The letter actually stated the inmate was needed for testimony.

We believe the BOP must improve its ability to effectively communicate with foreign national inmates, particularly those who speak languages other than Spanish. By removing language barriers to understanding the treaty transfer program, the BOP will not only be able to better explain the program to interested inmates, but will also be able to answer potential questions regarding eligibility requirements. We also believe written material should be readily available in all languages of nations with which the United States has a treaty transfer agreement so that inmates can make fully informed decisions.

**The BOP does not routinely inform inmates who have been previously denied approval for transfer when they become eligible to reapply for transfers.**

According to the BOP’s program statement, inmates whose requests for treaty transfer are denied may reapply 2 years after the date of the denial, but we found that there is no mechanism for the BOP to inform inmates when they are eligible to reapply. Although the BOP’s program statement requires that prison staff inform inmates about the policy on reapplying for transfers, no BOP policy requires staff to discuss the issue during program review meetings with the inmates.<sup>45</sup> A Senior Program Specialist we interviewed said that case managers should

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<sup>45</sup> BOP Program Statement 5322.12, Inmate Classification and Program Review, requires that inmates have program review meetings every 90 days if they have less than a year left on their sentences or every 180 days if they have more than a year remaining on their sentences.

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address treaty transfer issues at any program review. She said that information regarding the date of denial of an inmate's request for transfer is in the BOP's SENTRY information system, so case managers are able to check to see when the date to reapply is approaching and can discuss reapplication during the inmate's next program review.<sup>46</sup>

However, we found that the treaty transfer program is generally not discussed during inmates' program reviews. Only 6 of 49 (12 percent) BOP staff members we interviewed stated that the treaty transfer program was something that should be discussed with inmates during program reviews. Of the 36 inmates we interviewed, 14 (39 percent) said that their case managers discussed the treaty transfer program with them only when they first arrived in prison. One inmate stated that he discussed the transfer program once with his case manager and it was not brought up again. Another inmate stated that inmates "don't really talk about the program when they meet with their case manager."

OEO stated that IPTU sends a denial letter, which, in addition to providing the reasons for the denial, also informs the prisoner that he can reapply for transfer in 2 years. OEO stated that this is sufficient notice and, thus, that it is not necessary to require the BOP to monitor this date and remind the prisoner when the 2-year period is about to expire. We believe that during regularly scheduled program reviews the BOP has the opportunity to remind those inmates whose requests were previously denied that they may now be eligible. We also believe that by continually making the inmates aware of the treaty transfer program, whether through the prison handbooks or verbal reminders, the BOP will be able to either increase interest in the program or provide additional opportunities for transfer consideration to those previously denied who may have forgotten about the treaty transfer program.

**The BOP is not correctly determining inmate eligibility for the program in many instances.**

BOP case managers determine an inmate's eligibility for treaty transfer based on the BOP's program statement, which includes the requirements for the inmate to be from a treaty nation, sentence length, and, for Mexican inmates, immigration offenses that make them ineligible for transfer. According to the BOP, from FY 2005 through FY 2010, it forwarded only 10 percent (7,278 of 74,733) of foreign

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<sup>46</sup> SENTRY is the BOP's primary mission support database. The system collects, maintains, and tracks critical inmate information, including inmate location, medical history, behavior history, and release data.

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national inmates' requests to transfer to their home countries to IPTU for consideration. The vast majority of applications from interested inmates – 90 percent (67,455) – were deemed ineligible by the BOP and never forwarded to IPTU.

As previously noted, the treaties often establish significant limitations on inmates' eligibility for transfer, which the BOP considers in determining eligibility. For example, Mexican inmates, who represent the largest portion of foreign national inmates in BOP custody, are not eligible for treaty transfer consideration if they are incarcerated for an immigration offense. For these inmates, the case manager determines whether an inmate requesting treaty transfer is incarcerated for immigration offenses; if so, the inmate is deemed ineligible and no application is sent to IPTU. The BOP reported that case managers determined that 54,439 of the 67,455 (81 percent) requests for treaty transfer were from Mexican inmates. According to the BOP, of the 54,439 requests for treaty transfer from Mexican inmates, 37,273 requests were determined to be from inmates who were not eligible because they were incarcerated for immigration offenses.<sup>47</sup>

The BOP provided the OIG with data it obtained through a search limited to SENTRY to support that the BOP's eligibility determinations were made appropriately. However, the data provided by the BOP does not demonstrate that case managers determined eligibility correctly. For example, we found that 1,802 of 67,455 (3 percent) of those requests that were rejected, at least in part, due to immigration violations were not actually from Mexican citizens subject to treaty restrictions. Also, because information about additional convictions is in the inmate's central file, but not in SENTRY, an inmate's eligibility cannot be determined through SENTRY alone. We conclude that, although the majority of the BOP's determinations may have been appropriate, a case file review for each inmate would be required to accurately verify whether ineligible determinations were appropriate.

During our fieldwork, we reviewed a limited sample of 52 of the 67,455 cases in which the BOP determined inmates were ineligible to apply for treaty transfer.<sup>48</sup> We found errors in 9 of the 52 cases

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<sup>47</sup> An additional 17,166 were determined to be ineligible because they were Mexican inmates incarcerated for immigration offenses and had less than 6 months remaining on their sentences.

<sup>48</sup> Our sample was limited to 52 cases because the BOP's Office of Research and Evaluation stated that staff would have to do manual research to determine why each  
(Cont'd.)

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(17 percent) that indicate the cases could have been forwarded to IPTU, but were not. In six of these cases, we found that the BOP incorrectly determined that non-Mexican inmates were ineligible because they had immigration offenses that are disqualifying under the terms of the U.S.-Mexico bilateral treaty.<sup>49</sup> BOP officials said the case managers who worked on these six cases mistakenly thought the immigration offense rule applied to inmates from all countries. In another two cases, inmates were determined ineligible for treaty transfer because they were from non-treaty nations, specifically the Dominican Republic and Colombia. However, the inmates were actually from Denmark and Canada, which are treaty nations. Further, the BOP's data showed that one case was determined ineligible because of a "keying error," but the inmate was "now eligible." In total, of the 52 case managers' determinations of ineligibility we reviewed, 9 (17 percent) were incorrect.<sup>50</sup>

We also found in 12 of the 52 cases, inmates were determined to be ineligible because they had less than 6 months remaining on their sentences. These inmates were from Council of Europe treaty nations. The Council of Europe treaty states that inmates with less than 6 months remaining on their sentences can be eligible under exceptional circumstances. We found that the Council of Europe Convention and the BOP's program statement do not define exceptional circumstances, but IPTU's Deputy Chief provided examples of when IPTU would consider inmates with less than 6 months remaining on their sentences for transfer.<sup>51</sup> Although BOP policy indicates inmates with less than 6 months remaining on their sentences will be considered ineligible for transfer, we question whether adequate consideration was afforded to these inmates because the BOP's program statement does not define

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case was determined to be ineligible for a treaty transfer since this information is generally not available in SENTRY.

<sup>49</sup> BOP Program Statement 5140.39, Transfer of Offenders to or from Foreign Countries, states that Mexican inmates who are currently serving sentences exclusively for immigration law violations are not eligible for treaty transfer consideration unless the immigration offense is totally absorbed by another current sentence and the time served to date is equal to or greater than the sentence imposed for the immigration offense.

<sup>50</sup> We selected a sample of 52 transfer requests rejected by the BOP for analysis. Our sample selection methodology was not designed with the intent of projecting our results to the 67,455 inmates determined ineligible for treaty transfer.

<sup>51</sup> As examples, the Deputy Chief said IPTU had reconsidered two inmates with less than 6 months remaining on their sentences because one was pregnant and the other had cancer.



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exceptional circumstances. However, we did not include these 12 cases in our analysis.

The remaining 31 of 52 cases included:

- Twenty-two cases of Mexican inmates were determined ineligible because they were serving for an immigration violation.
- Six cases of inmates were determined ineligible to participate in the transfer program because their home countries were not treaty nations. Five of these cases contained input errors in SENTRY that wrongly listed the inmates' country of citizenship as Canada, which is a treaty nation. It was later determined these inmates were actually from China, Cuba, and Iraq, and therefore, were ineligible to participate in the transfer program because those countries are not treaty nations. The errors occurred because the case management staff keyed the wrong country code when the inmates were received at the prison. The errors did not affect the accuracy of the determination in these five cases. One case contained a keying error that indicated the inmate had "no interest."
- Two cases were correctly determined ineligible because the inmates were from Jamaica, which is not a treaty nation.
- One case where an inmate was not from a Council of Europe country and was determined to be ineligible for transfer because he had less than 6 months remaining on his sentence.

We believe the BOP could have incorrectly determined inmates to be ineligible for three reasons: (1) inaccurate information in the BOP's program statement about the eligibility requirements contained in the treaties; (2) inadequate training of case managers on how to determine eligibility; and (3) insufficient BOP management reviews of application packets and of case managers' decisions about eligibility. In the following sections, we discuss these factors.

The BOP's program statement does not accurately reflect the eligibility requirements contained in the treaties.

We determined that a major reason for case managers' inaccurate determinations is that the guidance they rely on is incomplete and incorrect. In interviews, 26 of 27 case managers told us that they use only BOP Program Statement 5140.39 for determining eligibility

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requirements and treaty transfer responsibilities.<sup>52</sup> We found four types of errors in the eligibility requirements listed in that program statement: (1) missing entries in the list of treaty transfer nations, (2) incorrect information on whether inmates with appeals in progress are eligible, (3) missing information regarding exceptions to the rule that inmates must have at least 6 months remaining on their sentences to be eligible, and (4) incomplete information on whether inmates with committed fines are eligible for treaty transfer. These errors are discussed further below.

### *Treaty Nations*

We interviewed 31 BOP case managers who told us that verifying whether an inmate's country is a treaty nation is the first and most important step in determining eligibility for treaty transfer. However, the list of treaty nations in the BOP program statement that case managers rely on is missing four countries: El Salvador, Honduras, Russia, and Uruguay.<sup>53</sup> El Salvador and Russia became treaty nations in 2007, and Honduras and Uruguay became treaty nations in 2009. In 2010, the BOP had 2,569 inmates from those 4 countries.<sup>54</sup>

We found that prior to 2007, the BOP issued "change notices" to revise the participating treaty nation list in Attachment A of the program statement. However, in 2006, the BOP's Office of National Policy Management began reformatting policies that contained change notices and informed staff that the most current list of treaty nations would be published on the Correctional Programs Intranet page on Sallyport.<sup>55</sup> The Senior Correctional Programs Specialist stated that the BOP moved

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<sup>52</sup> One of the 27 case managers said she did not know about the program statement. She said she relied on the direction of the case management coordinator. We interviewed four additional case managers but either did not ask them this question or did not receive a direct answer from them in response.

<sup>53</sup> The list appears in Attachment A of BOP Program Statement 5140.39 and was last revised in December 2009.

<sup>54</sup> The BOP determined that 1,316 of 67,455 cases were determined ineligible because the inmates were not from non-treaty nations. Our review of the BOP's data found that 16 of these 1,316 were actually from a treaty nation. Of those 16, 11 inmates were citizens of Costa Rica requesting transfer to Costa Rica, which is a treaty nation. The BOP said that a further review of the information contained in our response revealed Costa Rica was inadvertently included.

<sup>55</sup> Sallyport is the BOP's internal, centrally operated electronic depository of reference information published independently by multiple BOP sites and disciplines.

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the most recently updated list to Sallyport because it allowed the BOP to make changes to it without having to affect the program statement and go through employee union negotiation every time a new country needed to be added to the list. The BOP's Deputy Chief for Labor Management Relations said the BOP must negotiate with its union regarding any change to conditions of employment. He added that any change to the program statement could possibly be considered a change to the conditions of employment. The Administrator of the Correctional Programs Division stated that because the list of countries changes frequently, the BOP had seen a need to take the updates away from the program statement since the BOP could not easily change the program statement every time the countries changed.

We found that while the correct list is maintained on Sallyport and the program statement refers BOP staff to that online information, this is not the guidance the case managers use. All but one BOP case manager told us that they use only the program statement for determining eligibility.<sup>56</sup> Consequently, we determined that the case managers would likely have rejected requests for transfer from inmates from those four treaty countries listed on Sallyport but not in the program statement. In fact, one case manager we interviewed specifically said she will not ask anyone from El Salvador if they are interested in treaty transfer because "we don't have a treaty transfer with El Salvador."

As will be discussed later, the BOP issued a revised program statement in August 2011. The revised program statement deletes Attachment A, List of Treaty Countries, and states that the list of participating countries will be maintained on the Correctional Programs Division's Intranet page (Sallyport). We believe this change may prompt BOP staff to consult the current list of treaty nations on Sallyport.

### *Appeals and Collateral Attacks*

The *Council of Europe Convention on the Transfer of Sentenced Persons*, the *Inter-American Convention on Serving Criminal Sentences Abroad*, and the Mexican bilateral treaty state that an inmate's sentence must be final for the inmate to be eligible for transfer. According to 18 U.S.C. 4100(c), "offenders shall not be transferred to or from the U.S. if a proceeding by way of appeal or collateral attack upon the conviction

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<sup>56</sup> Only 1 of the 31 case managers we interviewed said she referred to Sallyport for information on the treaty transfer program.

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or sentence be pending.”<sup>57</sup> However, these points are not clearly defined in the BOP’s program statement.

The BOP program statement states, “The judgment must be final; the inmate must have no pending proceeding or appeal upon the current conviction or sentence.” However, there are certain types of appeals that may not make an inmate ineligible for transfer consideration. For example, IPTU’s Deputy Chief said that some types of appeals, such as an appeal on a civil judgment, do not make inmates ineligible for treaty transfers. Those types of appeals are not challenges to the sentence; rather they are other challenges, such as to the conditions of the inmate’s confinement. Inmates are ineligible only if they are challenging the validity of their convictions, according to the Deputy Chief.<sup>58</sup>

In addition, the BOP’s program statement does not clearly define collateral attacks. According to *USABook* (an electronic repository of legal information for USAOs), three provisions of federal law authorize three different collateral remedies for federal prisoners.<sup>59</sup> Information regarding what provisions apply to an inmate’s eligibility is not specified in the BOP’s program statement. However, despite a lack of a clear definition of collateral attack in the BOP’s program statement, the BOP’s transfer inquiry form, which all inmates interested in treaty transfer must sign, states, “I understand I am not eligible to apply for transfer if I have an appeal or collateral attack pending, but that I may apply when the appeal or collateral attack process has concluded.” Further, our review of the treaties found that only Mexican inmates are ineligible for treaty transfer if they have a collateral attack in progress. Inmates who are citizens of other nations are not subject to that provision, but this is not explained in the BOP’s program statement.

We believe that the BOP’s program statement and transfer inquiry form lack needed information regarding collateral attacks and lack clarity

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<sup>57</sup> “Collateral attack” is a broad term used to refer to a motion, other than a direct appeal, filed by a prisoner seeking to vacate his conviction or sentence.

<sup>58</sup> The BOP reported that 6,739 of 67,455 (approximately 10 percent) requests may have been appropriately categorized as ineligible based on pending appeals and pending charges; however, without researching each case individually, the BOP is unable to adequately determine their eligibility status.

<sup>59</sup> The three provisions are [28 U.S.C. § 2255](#), which provides a remedy meant as a substitute for a habeas corpus petition; [28 U.S.C. § 2241](#), which provides for writs of habeas corpus; and [28 U.S.C. § 1651](#), which authorizes federal courts to issue various common-law writs.

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concerning what specific types of appeals make inmates ineligible for transfer. Furthermore, given that 18 U.S.C. 4100(c) precludes inmates from transfer because of a pending appeal or collateral attack, but (1) no treaty other than the bilateral treaty with Mexico precludes an inmate from transfer and (2) different types of appeals may make an inmate eligible, we believe that evaluating an inmate's appeals status is a suitability issue best determined by IPTU rather than by the BOP. IPTU and the BOP should coordinate with each other to determine appropriate language, if any, for the BOP's program statement regarding whether an inmate with a pending appeal or collateral attack is eligible for transfer.

### *Six Months Remaining on Sentence*

The BOP's program statement states that to apply for the treaty transfer program inmates must have 6 months remaining on their sentences. Specifically, the BOP's program statement provides that an inmate "must have at least six months of the current sentence remaining to be served at the time for request for transfer."<sup>60</sup>

Our review of the treaties found that the 6-month requirement is not universal. The Organization of American States treaty and the U.S.-Mexico bilateral treaty require that inmates have at least 6 months remaining on their sentences. However, the Council of Europe Convention states, "in exceptional cases, Parties may agree to a transfer even if the time to be served by the sentenced person is less than" 6 months.<sup>61</sup> These exceptions are not reflected in the BOP's program statement, the Council of Europe Convention does not provide a definition of what constitutes an "exceptional case," nor has the Department defined what is meant by the term. As discussed previously, the BOP had determined 12 inmates in our sample were ineligible for treaty transfer although those inmates were from Council of Europe treaty nations and should have been subject to review to determine if they qualified as exceptional cases.<sup>62</sup>

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<sup>60</sup> Three countries require at least 12 months to be remaining on an inmate's sentence (France, Hong Kong, and Thailand).

<sup>61</sup> Article 3, Section 2, of the Council of Europe treaty. The treaty covers 64 nations.

<sup>62</sup> The BOP determined that 4,924 of 67,455 inmates were ineligible for treaty transfer because these inmates had less than 6 months remaining on their sentences. Based on our review of BOP data, we found that of those 4,924 inmates, 3,896

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Since BOP policy indicates inmates with 6 months or less remaining on their sentence will be considered ineligible for transfer, we question whether adequate consideration was afforded to these inmates because the BOP's program statement does not define exceptional circumstances. The OIG does not believe that all inmates with 6 months or less remaining on their sentence should be considered; only those few inmates who can claim exceptional circumstances. Because each inmate's request for transfer is unique and based on individual circumstances, we believe that a small number of inmates from Council of Europe treaty nations with less than 6 months could face exceptional circumstances that merit consideration for a more in-depth evaluation by IPTU to determine their suitability for transfer. In response to a working draft of this report, OEO stated that it could provide to the BOP examples of some situations that could qualify as exceptional circumstances, such as grave illness of a prisoner or pregnancy of the prisoner, which will enable BOP to identify such cases for consideration.

#### *Committed and Non-Committed Fines*

According to the BOP's program statement on the treaty transfer program, "An inmate with a committed fine may not be considered for return to the inmate's country of citizenship for service of a sentence imposed in a United States court without the permission of the court imposing the fine."<sup>63</sup> However, we found the program statement does not define "committed fine" or refer to BOP Program Statement 5882.03, Fines and Costs for "Old Law" Inmates, which provides detailed information regarding committed fines.<sup>64</sup> For example, Program Statement 5882.03 defines a committed fine as "a monetary penalty imposed with a condition of imprisonment until the fine is paid." Program Statement 5882.03 also clarifies that committed fines apply only to those inmates convicted of offenses before November 1, 1987. Without this clarification, case managers could incorrectly determine an inmate to be ineligible for transfer. Further, the program statement distinguishes committed fines from non-committed fines, the latter being fines that do not impose a condition of confinement, but as noted above,

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(79 percent) were from Council of Europe treaty nations, which permit exceptions to the 6-month eligibility requirement in exceptional cases.

<sup>63</sup> BOP Program Statement 5140.39.

<sup>64</sup> As opposed to a committed fine, court ordered restitution is a financial penalty to be paid to the victim.

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the program statement regarding treaty transfer does not spell out this distinction.<sup>65</sup>

In general, we found that BOP staff had differing opinions about whether an inmate with any fine was eligible for transfer. For example, one case manager stated fines are a factor that will not cause an inmate to be ineligible. However, another case manager told us that when he determines whether an inmate is eligible for transfer, he reviews the inmate's case file to determine whether the inmate has any unpaid fines.

Our review of the COE Convention, OAS Convention, and U.S.-Mexico bilateral treaty found that committed fines were not listed as a disqualifier for treaty transfer. In fact, only one treaty, a bilateral treaty with France, includes any fine as a possible disqualifier for treaty transfer. IPTU explained that most cases have some type of pending fine and that such fines are usually modest, although occasionally fines can be substantial. The United States does not view a fine as an automatic bar to transfer but rather as another factor to consider when evaluating the application.

IPTU's Deputy Chief said that committed fines are "ancient" and they are a suitability issue instead of an eligibility issue. He also said that committed fines "could probably be taken out of the program statement" as an eligibility criterion because they pertain only to inmates convicted of offenses before November 1, 1987. We believe that the BOP should work with IPTU to clarify whether committed fines or non-committed fines are disqualifying for treaty transfer eligibility and should reconsider whether committed fines are best determined by IPTU rather than the BOP.

BOP officials explained why there are discrepancies in its program statement.

Neither the BOP nor IPTU have addressed the discrepancies in the BOP's program statement's criteria for transfer eligibility. When we asked BOP management officials about the program statement, they told us it is only a guide, not official policy. For example, the BOP's Senior Deputy Assistant Director, Correctional Programs Division, said that BOP staff typically have to rely on their years of experience to make the determination as to whether an inmate is eligible for the treaty transfer

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<sup>65</sup> Program Statement 5882.03 defines a non-committed fine as "a monetary penalty which has no condition of confinement imposed."

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program. He further said that the decision about whether to forward an application packet to IPTU is largely at the discretion of the individual case manager. This was confirmed by the Assistant Administrator, Correctional Programs Division, who said the program statement affords case managers opportunities to interpret and use judgment. If an individual case manager believes an inmate is ineligible based on the program statement, the case manager will not forward an application.

IPTU staff voiced concerns regarding the BOP's program statement and the ability of BOP case managers to determine eligibility. IPTU's Chief said the eligibility criteria established in the BOP's program statement are "a bit deceptive." She said she is not comfortable with the wording of the program statement because it makes it seem the BOP has a greater role than it actually does in determining whether an inmate is eligible for transfer. Further, IPTU's Deputy Chief said there is "a lot of gray area" for determining eligibility in the program statement.

It is our opinion that the laws and treaties are not clearly explained in the program statement. We believe that there should be clear eligibility statements that case managers or other BOP staff can readily use without interpretation to determine an inmate's eligibility to apply to the program. Matters requiring legal interpretation on whether an inmate is eligible should be forwarded to IPTU for an eligibility determination.

The BOP has updated its treaty transfer program statement.

Generally, when the BOP revises a program statement, it sends the changes to its personnel affected by the program changes for review, as well as to the BOP's Information, Policy, and Public Affairs Division, which formats the document and sends it back to the program's personnel. The revised program statement is then reviewed by affected personnel before it is sent to the BOP's Labor Management Relations branch to determine if the union would like to negotiate any changes. The Administrator of the BOP's Correctional Programs Division said that the BOP reviews program statements annually. If revisions are necessary, the BOP makes them and provides the updated program statement to the union. The union then has 30 days to invoke its right to negotiate the BOP's revisions.

The BOP issued a revised program statement on August 4, 2011, that will replace the program statement reviewed during our field work, which had been last updated on December 4, 2009. This recently issued



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program statement provides clarifying information on inaccuracies we identified above. Specifically, the revised program statement:

- provides clarification regarding committed fines. The revised program statement states that committed fines were imposed on “Old Law” cases committed prior to November 1, 1987.
- provides clarification regarding appeals or collateral attacks. Specifically, the revised program statement says an appeal challenges the decision made in the same case, whereas a collateral attack is a motion filed pursuant to 28 U.S.C. § 2255 that challenges some aspect of a former judgment due to an injustice or unconstitutional treatment that occurred in the former case.
- deletes Attachment A, List of Treaty Countries, and states that the list of participating countries will be maintained on the Correctional Programs Division’s Intranet page (Sallyport).

On July 22, 2011, the BOP’s Deputy Chief for Labor Management Relations told us that the updated draft program statement did not require union review and negotiation because it was included as part of a settlement reached with the union concerning several issues. However, the revised program statement does not address the weaknesses we identified to the BOP concerning the way case managers determine eligibility. The Deputy Chief also stated that any other changes to the program statement resulting from our review would require the BOP to begin the revision process again.

We conclude that the BOP needs to address the inaccuracies in its program statement on the treaty transfer program and provide more clarifying information on specific eligibility criteria if more inmates are to be given an appropriate opportunity to apply for the program. While the BOP recognizes the need for changes in its program statement and has issued a revised program statement, the revised version we were provided did not address all the weaknesses we found. Also, the Deputy Chief explained that program statement revisions are negotiated with the union individually and usually according to the order in which they are submitted for union review. We are concerned that any revisions to subsequent versions of the program statement to address the deficiencies we found will cause the corrected program statement to be placed at the end of the list of policies awaiting union negotiation, which will result in additional delays for implementing an accurate program statement. Such delays may result in unnecessary incarceration costs to the BOP

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for those inmates who might be determined eligible and ultimately approved for transfer. We believe it is essential that the BOP have the capability to quickly develop, update, and implement program statements affecting its ability to fulfill its mission.

The BOP's treaty transfer training for case managers is inadequate.

The BOP's case managers receive inadequate training on the treaty transfer program and how to determine an inmate's eligibility to apply to the program. While the Assistant Director and Senior Deputy Assistant Director, Correctional Programs Division, said that all case managers receive training regarding their treaty transfer responsibilities, we found that was not accurate. Of the 31 case managers we interviewed, 23 (74 percent) said they received training regarding the treaty transfer program, while 8 (26 percent) said they did not. Of the 23 case managers who said they had received training, 9 case managers said they attended formal classroom training on the treaty transfer program. The remaining 14 said they received on-the-job training, which included working with a more experienced case manager. For example, one case manager said she was provided a manual by her institution's management and paired with another case manager for on-the-job training.<sup>66</sup>

When we reviewed the most recent training material available (from November 2010) for both national and prison-level training for case managers, we found that it was based on the BOP's inaccurate program statement. The slide presentation provided to case managers during national-level training and training material provided to us at the prisons we visited contained incorrect information about eligibility requirements.

While the majority of the case managers we interviewed received some form of training, we conclude that the training provided is inadequate because it is based on the program statement, which as we describe above contains inaccuracies regarding eligibility requirements.

BOP management's review of case managers' eligibility decisions is insufficient.

A third reason we believe the BOP incorrectly determined inmates to be ineligible for treaty transfer is because of insufficient review of case managers' eligibility determinations. According to 28 C.F.R. Ch. 5

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<sup>66</sup> One case manager reported receiving both types of training.

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§ 527.44, BOP management is required only to verify that the inmate is qualified for transfer. During our site visits, we found that of the 18 prison management officials we interviewed, only 2 said they verify the case manager's eligibility determination, while 16 said they review application packets for spelling and grammar mistakes and to ensure that all required documents were included.

More importantly, we found that because the regulation does not require it, prison management does not review case managers' ineligibility determinations. Yet, as previously discussed, 17 percent of our sample of inmates that BOP case managers determined were ineligible for treaty transfer should have been found eligible. We believe many of those errors could have been caught if ineligibility decisions were reviewed. Consequently, we believe management should review both eligible and ineligible determinations. Such a review process needs to ensure that denials are limited to cases where inmates do not meet basic eligibility requirements.

## **Conclusion**

The BOP appears to inform inmates of the treaty transfer program, but even when inmates are provided information about the program, they often do not fully understand it because of language barriers. The BOP must improve its ability to effectively communicate with foreign national inmates, particularly those who speak languages other than English, French, or Spanish. By removing language barriers to understanding the treaty transfer program, the BOP will be able to better explain the program to interested inmates and answer potential questions on eligibility requirements. We also believe written material, such as the handbooks that prisons give to newly arrived inmates or the transfer inquiry form should be readily available in all languages of nations with which the United States has a treaty transfer agreement so that inmates can make fully informed decisions.

The BOP is not informing those inmates that were previously not interested in treaty transfer that they may still be eligible if they want to apply. Also, during program reviews, the BOP does not remind inmates whose requests were previously denied that they may be eligible to reapply. By continually making inmates aware of the treaty transfer program, the BOP may be able to increase interest in the program and provide additional opportunities for those previously denied. By actively engaging inmates in conversations about the treaty transfer program in languages they understand well, the BOP will provide inmates with more opportunities to learn about the program.

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For those instances where treaty provisions do not disqualify inmates, case managers may not correctly be determining inmates' eligibility for treaty transfer because the BOP's program statement does not accurately reflect eligibility requirements. While the BOP recognizes the need for changes in the program statement and has revised it, the updated version will not address all the weaknesses we found. In addition, BOP officials stated that implementing the revisions may take a long time due to union review. Such a delay may result in unnecessary incarceration costs to the BOP for inmates who could be determined eligible and ultimately approved for transfer. Also, the BOP's treaty transfer training for case managers is inadequate. Additionally, BOP managers' review of case managers' determinations is insufficient and does not verify the accuracy of case managers' ineligibility determinations.

### **Recommendations**

To ensure inmates fully understand the treaty transfer program, we recommend the BOP:

1. make all documents related to the treaty transfer program available to staff on the BOP's internal Intranet in all treaty nation languages; and
2. update its policies to require BOP staff to discuss the treaty transfer program with inmates at each program review.

To reduce erroneous determinations and ensure denials are limited to cases where transfer is inappropriate, and to ensure that the BOP's program statement is accurate, staff are trained on eligibility criteria, and there is oversight of case manager eligibility decisions, we recommend that:

3. the BOP and IPTU coordinate to ensure that the BOP's program statement accurately reflects eligibility criteria based on treaty requirements and IPTU considerations, and that the BOP provide a revised program statement to its union for review;
4. the BOP ensure that all staff members involved in treaty transfer determinations are adequately trained; and
5. the BOP establish a process for reviewing ineligibility determinations made by case managers to ensure their accuracy.

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## CHAPTER II: EVALUATING SUITABILITY FOR TRANSFER

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**IPTU's determinations regarding inmates' suitability are inconsistent and result in disparate treatment of inmates in similar circumstances. IPTU does not provide enough information in denial letters, resulting in inmates not fully understanding the reasons for denial or what they can do to address those reasons. In addition, no formal reconsideration process exists, and inmates who are denied transfers generally must wait 2 years before reapplying. We also found that, while some USAOs occasionally include provisions regarding treaty transfer in plea agreements, others lack awareness of the treaty transfer program.**

**IPTU's determinations regarding inmates' suitability are inconsistent and result in disparate treatment of inmates in similar circumstances.**

After a BOP prison determines that an inmate is eligible to apply for the treaty transfer program, the BOP's Central Office submits an application packet to IPTU in the Criminal Division. IPTU reviews the application and approves or denies the inmate's request for transfer. IPTU evaluates an inmate's suitability for treaty transfer based on factors that include the inmate's likelihood of social rehabilitation, law enforcement concerns, and the likelihood the inmate will return to the United States.

Based on interviews with OEO and IPTU officials and analysts, as well as a review of 511 IPTU case files, we found that IPTU's determinations of inmates' suitability for transfer are inconsistent. We also found that inmates did not fully understand why their requests were denied or know what they could do to address the reasons for the denials. Further, there is no provision to allow inmates to request reconsideration. An inmate's only recourse is to wait 2 years and then reapply for a transfer.

IPTU's determinations of inmates' suitability for transfer are inconsistent.

IPTU provides its analysts with guidelines contained in the *2003 Prisoner Transfer Treaty Requirements and Guidelines* (guidelines) that govern how they are to evaluate treaty transfer requests, and analysts

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record the reasons for their decisions using IPTU denial codes.<sup>67</sup> The guidelines contain criteria for evaluating prisoner applications for treaty transfer such as the inmate’s likelihood of social rehabilitation, law enforcement concerns, and the likelihood the inmate will return to the United States.

When IPTU analysts evaluate inmates for suitability for transfer, they use criteria derived from the guidelines. In their recommendations for transfer, IPTU analysts justify their use of criteria in the application summary that is reviewed by IPTU management. We reviewed these justifications and found examples of inconsistent reasons for IPTU analysts’ recommendations to approve or deny inmates for treaty transfer. This has resulted in some inmates being disapproved while others in similar circumstances were approved.<sup>68</sup> IPTU analysts also said that they conduct their reviews on a case-by-case basis. We discussed IPTU’s application of criteria with IPTU staff, BOP case managers, and inmates. BOP case managers said that they have seen some inmates getting approvals while other inmates in similar circumstances were denied, which we confirmed during our case file review. The following are examples we found during our case file review of how the criteria were applied inconsistently by IPTU analysts and IPTU management evaluating requests for treaty transfer:

- One inmate who had lived in the United States for 11 years was denied transfer because that was considered “a long time,” while another was approved for transfer even though he had lived in the United States for 15 years because “he could receive visits in jail from his parents until his eventual release from prison” in his home country.
- One inmate’s request was denied because five of his siblings and an adult child were living in the United States (or, as the IPTU analyst put it, “half of his family was here”), while another inmate was approved for transfer despite having seven of his nine siblings living in the United States.

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<sup>67</sup> Denial codes are derived from the guidelines. See Appendix VIII for more on denial codes.

<sup>68</sup> Some of the justifications we reviewed presented more than one criteria for approval or denial. Because IPTU can deny an inmate for multiple reasons, our analysis was limited to the individual justification for specific criteria. We analyzed and compared similar justifications that appeared in multiple recommendations for approval or denial of treaty transfer requests.

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- One inmate was deported from the United States on two occasions, but was approved for transfer because his family re-located to Mexico, eliminating the incentive to return to the United States. Another inmate's request for transfer was denied for past deportation and illegal reentry despite serving 61 percent of his term and having his parents, two siblings, his common-law wife, and all three of his minor children living in Mexico. The IPTU Chief stated in the case file that the inmate's request should be denied because his past deportation and illegal reentry showed "he likes it here."

We also found that IPTU analysts did not give the same weight to the key factors they used in evaluating prisoners for transfer. One IPTU analyst stated that the key factors he used to evaluate a transfer request were "rehabilitative potential," whether the inmate had pending appeals or collateral attacks, whether the inmate was needed for testimony, the seriousness of the offense, and the inmate's role in the offense. Another IPTU analyst said the key factors she considered were whether the inmate's contacts with his family were strong and whether the family was in the United States or abroad. A third IPTU analyst said the key factors she considered included whether an underlying offense involved weapons, how long the inmate had been in the United States, the location of the inmate's support system, previous deportations, and restitution.

The IPTU Chief said the key factors that she looked at were the inmate's behavior in prison, where the inmate's family was, how long the inmate had been in the United States, how serious the offense was, and whether the inmate had been deported in the past. With respect to Mexican nationals, she said the key factors she looked for were whether the inmate was a domiciliary because some inmates may have been in the United States for 5 years but have family in Mexico. In such a case, the IPTU Chief said it would make more sense for the inmate to be transferred to finish serving his sentence in Mexico instead of being deported after serving the sentence in the United States.

Another area where IPTU analysts differed markedly was restitution. IPTU's guidelines state that restitution is a law enforcement and prosecutorial consideration that needs to be settled prior to transfer because "all supervisory authority over the prisoner is terminated when the prisoner transfers." One IPTU analyst said that having not made restitution was an automatic disqualifier or "deal breaker," while another IPTU analyst said she would consider that an inmate with an order to pay restitution might be eligible for transfer. A third IPTU analyst said

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that the amount of restitution was significant to her and she considered a threshold of owing \$5,000 in restitution to be sufficient to recommend denying a transfer request. She added that whether the inmate had “swindled” people of out money or their life savings was the most important factor in considering a request.

There was also disparity between IPTU staff and OEO, which approves IPTU transfer decisions, regarding inmates owing restitution. The IPTU Chief said she considered whether an inmate had made restitution to be a very important factor. For example, in one case file we reviewed the IPTU Chief commented:

Despite our long standing position that prisoners with outstanding restitution should not be transferred, [IPTU analyst] recommends approval of this request arguing that the legislative history does not mandate this result in every restitution case and that a deviation from this position is justified now because of the unique facts and humanitarian concerns present in this case. I do not agree.

However, the OEO Deputy Chief told us that if an inmate meets all other requirements for transfer except for restitution, IPTU may consider these cases more closely and OEO “will not hold someone up for a thousand dollars in restitution.”

At the time of our fieldwork the OEO Director said that OEO would examine how the issue of restitution should be considered when evaluating a transfer request. He added that there are a lot of “policy implications” to carefully review before OEO can make any adjustments. In response to a working draft of this report, OEO stated that the Department has recently reviewed the issue of whether outstanding restitution precludes the transfer of an inmate and has determined that outstanding restitution is not a bar to transfer. OEO further informed us that IPTU analysts will be trained on the restitution issue in the near future.

The IPTU Deputy Chief recognized that IPTU analysts have different perspectives when determining the suitability of an inmate for treaty transfer and some analysts often make recommendations without studying the case. He explained that some IPTU analysts are more likely to deny inmates’ requests than others and that “the pro-transfer analysts have to work a lot harder,” because they have to make a better case for transfer. He added that “it is easier to say no than it is to say yes” because an analyst that is more inclined to deny a transfer only has to



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find one reason to deny, whereas a pro-transfer analyst has to find multiple reasons to support that position. The IPTU Deputy Chief stated that it is the IPTU Chief's responsibility to mitigate the different analysts' perspectives. However, despite the IPTU Chief's review, we still found inconsistencies in application of the criteria in the files we examined. In response to a working draft of this report, OEO stated that it will review the criteria with all analysts to ensure greater consistency by all of the analysts on the substance and use of the guidelines.

*IPTU has an expedited review process to evaluate Mexican inmates because Mexico will only approve specific inmates for transfer.*

As previously noted, IPTU is limited in determining whether an inmate is suitable for treaty transfer because of restrictions established in the treaties. For example, Mexico, which represents the most foreign national inmates in BOP custody, will not approve transfer requests of inmates who are domiciliaries of the United States.<sup>69</sup> According to IPTU officials, since 2001, Mexico no longer approves transfer requests for inmates who have more than 5 years remaining on their sentences or whose cases have other factors, such as possessing a firearm during the offense. Mexico, citing its overcrowded prisons and drug violence, developed and relies on criteria to limit its acceptance of transfer candidates. Specifically, in 2001, the Mexican government provided a letter to IPTU with criteria that would make an inmate suitable for Mexico to accept. The Mexican government said:

The best Mexican prisoner candidate for transfer will be those whose cases indicate the existence of all of the following factors: low security level; no involvement with organized crime; good conduct while incarcerated; no prior criminal records, and 5 years of sentence remaining to be served before being transferred to Mexico.<sup>70</sup>

According to OEO, IPTU developed a separate process to expedite the review of Mexican inmates that reflects some, but not all, of the characteristics identified by Mexico several years before the 2001 letter. This process includes determining whether the inmate:

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<sup>69</sup> According to Article IX(4) of the bilateral treaty with Mexico, "A 'domiciliary' means a person who has been present in the territory of one of the parties for at least five years with an intent to remain permanently therein."

<sup>70</sup> Deputy Chief of Mission, Embassy of Mexico, memorandum to the Chief of IPTU, October 11, 2001.

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1. is a legal permanent resident of the United States,
  2. has immediate family in the United States,
  3. has a prior criminal record,
  4. has lived in the United States more than 5 years,
  5. had a weapon or firearm or other significant conduct during the offense,
  6. has prior illegal entries into the United States or deportations, or
  7. has significant misconduct while in prison.

However, IPTU's Deputy Chief said IPTU should not automatically deny all of the requests of inmates who have 5 years or more remaining on their sentences because "it is IPTU's job to evaluate all the cases."

The Department has stated that the 2001 criteria the Mexican government relies on are too restrictive and limit the number of Mexican inmates whose requests the Department might have otherwise approved. In 2007, the Department reported to Congress that Mexico's reasons for denying transfer to its nationals were not persuasive. For example, Mexico cited problems with overcrowding in its prisons as a reason for not approving more of its nationals for transfer, but the United States is experiencing overcrowding in its prisons as well. The Department also stated that it believed that the overly restrictive approval criteria applied by Mexico were too broad and were in direct conflict with the original rehabilitative and humanitarian intent of the transfer treaty between Mexico and the United States.<sup>71</sup> IPTU officials told us that Mexico still institutes restrictive criteria, resulting in fewer inmates ultimately transferred.

**IPTU does not provide enough information in denial letters, resulting in inmates not fully understanding the reasons for denial or what they can do to address those reasons.**

In our review of denial letters and interviews with inmates, we found that inmates generally do not understand why their requests for transfer were denied, which in turn limits their ability to improve the likelihood of a future transfer. We found that the reasons cited in denial letters are often vague, lack detailed information, and are generally misunderstood by inmates and BOP case managers. In interviews with

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<sup>71</sup> Alberto Gonzales, Attorney General, Department of Justice, submitted to the Committees on the Judiciary of the United States Senate and House of Representatives, concerning "The Effectiveness of the International Prisoner Transfer Treaties to which the United States was a party in FY 2005 and FY 2006" (April 2007).

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inmates, we found that only 9 of 36 (25 percent) fully understood why their requests were denied. Of the remaining inmates we interviewed, 6 of 36 (17 percent) said they were aware of the stated reason their request was denied, but did not understand why the stated reason applied to them. Twelve of the 36 (33 percent) inmates did not understand why their transfer requests were denied at all.<sup>72</sup> For example, one inmate said he did not think that it made sense that IPTU denied his request on the grounds that he owed restitution. He went on to say that he would be deported at the end of his sentence anyway, and once he was deported restitution would be “out the window.”

In addition, BOP case managers said they generally did not understand the basis for IPTU’s denials and did not know whether inmates understood the reasons why their requests were denied. The case managers described IPTU denial letters as “generic,” “vague,” and lacking detail. Several case managers also said that inmates had reported not understanding the reasons for denials.

We found the denial letters in our sample of case files listed the reasons for denial but were not detailed. For example, letters stated “the inmate is more likely to be approved in the future” if the inmate has “attempted to address those reasons for denial [over] which the inmate has some control,” but did not state what the inmate specifically needed to do to improve the likelihood for transfer. OEO recognized that this sentence in the IPTU denial letter may be confusing. Accordingly, OEO stated that this sentence will be deleted from future denial letters.

In addition, if an inmate writes to IPTU asking why a transfer request was denied, IPTU will offer a more detailed response in a follow-up letter that is specific to the inmate’s case. However, the denial letters within our sample of case files did not inform inmates that they could write to IPTU for an additional explanation. Some IPTU personnel stated that case managers could call IPTU and seek clarification about denials. However, the BOP’s program statement prohibits institution staff from seeking more information from IPTU. We believe this information needs to be included in the denial letter.

We also believe inmates should be informed that they can contact IPTU to obtain more information about the reasons for denial and that they may provide information to IPTU about actions they have taken to remedy the reasons for their denial. IPTU should provide more detailed

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<sup>72</sup> Nine inmates were not asked if they understood the denial reason.

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explanations addressing the reasons for denial in initial denial letters, so that inmates may make themselves better candidates for transfer in subsequent requests. In response to a working draft of this report, OEO stated that to ensure potentially suitable prisoners are notified that they may submit substantial evidence demonstrating that their circumstances have materially changed, IPTU will modify denial letters to advise them of that opportunity.

**No formal reconsideration process exists, and inmates must generally wait 2 years before reapplying.**

The IPTU Deputy Chief stated that the only form of appeal for denial of a transfer request is the letters that IPTU receives from inmates asking IPTU to reconsider their cases. He said a reconsideration process is unnecessary because it is not required by the treaties or by statute, IPTU has other cases to consider, and inmates can always reapply in 2 years. He added that a 2-year waiting period allows for manageable caseloads that enable IPTU analysts to give their full attention to each case. Additionally, according to OEO, a 2-year period was established because it was deemed a reasonable period of time in which any significant changes in the prisoner's status might occur. However, OEO went on to say that, as a practical matter, the situations of most prisoners do not change dramatically in 2 years. We found that the 2-year waiting period is not standard for all cases. In our case file review, we found at least four instances in which IPTU had reconsidered its denial before the 2-year period elapsed.<sup>73</sup>

While the 2-year waiting period may be appropriate, we believe that the lack of a standard reconsideration process does not serve the rehabilitative nature of the treaty transfer program because circumstances of an inmate can change within 2 years. We believe providing a more formalized reconsideration process will provide more opportunities for an inmate to be considered for transfer.

In response to a working draft of this report, OEO also stated that denials that it would typically reconsider are cases where there are pending appeals or where the USAO or law enforcement needs the prisoner for testimony or an investigation. In the past, the analyst contacted the USAO or law enforcement agency after a specified period to determine if the barrier to transfer still existed. Recently, IPTU has

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<sup>73</sup> For example, an inmate was denied transfer because he was needed for testimony at one point, but after it was determined that he was not needed, IPTU reconsidered his transfer request.

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instituted a computerized notification system that provides reminders to the analyst, with a copy to the Chief, when these contacts should be made.

**While some USAOs occasionally include provisions regarding treaty transfer in plea agreements, others lack awareness of the treaty transfer program.**

During their evaluation of inmates' suitability for transfer, IPTU analysts contact the prosecuting USAOs for their position on the requests for transfer. The USAOs also can state their position on treaty transfer during plea agreement negotiations. The USAM states that the decision to approve or deny a transfer request is based on the legality and overall appropriateness of the requested transfer, and making that decision has been delegated by the Attorney General to the Director and Senior Associate Director of OEO. A myriad of factors enter into the final decision, including in some instances factors of which the USAO has no knowledge. Accordingly, the USAO is not in a position to guarantee that a transfer will be approved in any particular case. However, the USAM states that USAOs may include language regarding recommendations related to treaty transfer as part of a plea agreement. Specifically, the USAM states:

A prosecutor may promise, as part of a plea agreement, to recommend that a particular defendant/prisoner be transferred pursuant to a treaty to his or her home country to serve his/her sentence. In the alternative, the prosecutor may agree not to oppose the prisoner's request for transfer. The United States Attorney's Office may not, however, promise that a transfer will in fact be granted.<sup>74</sup>

The Executive Office for United States Attorneys' (EOUSA) Legislative Counsel stated that each of the 94 USAOs may have different practices regarding plea agreements because they are entirely within the discretion of the district's U.S. Attorney. She further stated that providing sample language which a prosecutor may include in a plea agreement may help make AUSAs more aware of the treaty transfer program. Some Criminal Chiefs we interviewed agreed that including sample language may help AUSAs be more aware of the treaty transfer program.

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<sup>74</sup> *United States Attorneys' Manual*, Title 9, Chapter 9-35.100.

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Although USAOs have the opportunity to include language regarding treaty transfer recommendations as part of plea agreement negotiations, we found that they usually do not. Our findings were confirmed during interviews with 17 USAO Criminal Chiefs who reported that the AUSAs in their offices rarely or never included treaty transfer recommendations in plea agreements. In addition, although almost all (97 percent) federal criminal cases are resolved by plea agreement, in our review of IPTU case files, we found that only 17 cases of 267 (6 percent) contained copies of plea agreements and language regarding treaty transfer recommendations.<sup>75</sup> We believe including treaty transfer recommendations, when appropriate, in plea agreements could increase participation by making inmates more aware of and interested in the program.

We identified two possible reasons why AUSAs do not include language regarding treaty transfer recommendations in plea agreements. First, Criminal Chiefs expressed concerns about the transferred inmates not being required to serve their full sentences after transfer. Second, Criminal Chiefs said that AUSAs are generally unfamiliar with the treaty transfer program.

USAOs were not familiar with the 2002 Assistant Attorney General memorandum explaining the international prisoner transfer program.

The Assistant Attorney General's 2002 memorandum described previously in the background section of this report explained the treaty transfer program and dispelled some of the misconceptions that AUSAs had about the program. The misconceptions included the belief that an inmate will serve a lighter sentence in the home country, a lack of confidence in the Mexican prison system, and the likelihood that an inmate will return to the USAO's jurisdiction and commit new crimes. The memorandum stated that these misconceptions should not be reasons for an AUSA to object to a transfer. Finally, the memorandum warned against blanket USAO policies recommending against transfer because such policies contravene the United States' treaty obligations and Department policy.

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<sup>75</sup> The percentage of cases resolved by plea agreements is from U.S. Sentencing Commission, *2010 Sourcebook of Federal Sentencing Statistics*. In our case file review, we found 244 case files that lacked an AUSA position on treaty transfer in plea agreements. We did not verify whether the 511 cases we reviewed had involved plea agreements, only whether the inmates' treaty transfer case files had evidence of treaty transfer recommendations made by USAOs.

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However, 10 out of 17 (59 percent) Criminal Chiefs we interviewed were not familiar with the information provided in the 2002 memorandum. Most said that they had probably read it in 2002 when it was issued, but had not referred to it since then.

The *United States Attorneys' Manual* provides outdated guidance to AUSAs on the treaty transfer program.

The USAM, which serves as the main reference for AUSAs regarding how to conduct their work, contains out-of-date information and inaccuracies that could make it difficult for them to correctly apply treaty transfer provisions.<sup>76</sup> The 17 Criminal Chiefs we interviewed were aware that the USAM includes guidance on the treaty transfer program, and 12 told us they (or AUSAs) refer to the USAM. However, we noted that the USAM's list of treaty nations was last updated in 1997 and omits 41 countries currently identified by IPTU as treaty nations. Further, IPTU's Chief told us there were inaccuracies in the USAM's guidance on the treaty transfer program and that IPTU had drafted revisions to the USAM. EOUSA's Legislative Counsel stated that IPTU submitted its revisions to EOUSA on June 9, 2011, and EOUSA tabled the review process until after the OIG's report was issued so that EOUSA could incorporate any resulting changes at one time.

We found IPTU's proposed revisions to be more detailed than the USAM's current guidance. For example, the USAM states that "jurisdiction over any proceeding to challenge, modify, and/or set aside the offender's conviction or sentence remains with the country in which the sentence was imposed." In comparison, IPTU's revised USAM states:

When a prisoner is transferred, the responsibility for administering the sentence belongs exclusively to the receiving country. The sentencing country loses jurisdiction over the prisoner's sentence, and violations of the terms or conditions of the original sentence, including supervised release, cannot be enforced even if the prisoner returns illegally to the U.S. after being released from the foreign prison.

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<sup>76</sup> EOUSA's Legislative Counsel stated that when a Department component proposes changes in Department policy, a proposal to modify the USAM is submitted to EOUSA and the Attorney General's Advisory Committee for review and submitted for consideration by the Department official with delegated authority to approve the proposed changes.

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We believe IPTU's proposed revisions to the USAM would provide AUSAs more detailed and up-to-date information about the treaty transfer program.

AUSAs are provided little or no training on the treaty transfer program.

We found that EOUSA provides little formal training on the treaty transfer program to USAOs, and the training that is provided is not given regularly to the AUSAs. We asked our interviewees about treaty transfer training, and most said AUSAs receive little to no training on the treaty transfer program. Several Criminal Chiefs stated that the Department could provide better training and publicity about the program.

EOUSA provided one example of IPTU's Deputy Chief participating in a presentation at the National Advocacy Center in June 2010 entitled, "International Prisoner Transfer: When A defendant requests to serve a sentence in his/her home country," which discussed the treaty transfer program.<sup>77</sup> In addition, EOUSA provides information on its Intranet to USAOs on the treaty transfer program, including links to the USAM, the *Criminal Resource Manual*, and two papers written by the IPTU's Chief describing the treaty transfer program. In response to the working draft of this report, EOUSA now also provides the 2002 Assistant Attorney General memorandum on its Intranet for USAOs.<sup>78</sup>

## **Conclusion**

Based on our analysis, we conclude that the criteria used by IPTU analysts to determine an inmate's suitability for transfer are applied inconsistently. While we acknowledge the unique nature and facts of each case that IPTU must evaluate, the criteria exist to assist the review and decision-making for each case. However, we believe that each analyst should weigh the criteria similarly because doing so would result in inmates still being evaluated on an individual basis while receiving the same consideration as other candidates. We also concluded that IPTU's denial reasons should be further explained in denial letters. Further, the lack of a standard reconsideration process presents additional barriers to

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<sup>77</sup> The National Advocacy Center is operated by EOUSA to train federal, state, and local prosecutors and litigators in advocacy skills and management of legal operations.

<sup>78</sup> OEO is also considering providing materials about the treaty transfer program to the Federal Public Defender in each USAO district to ensure that each inmate is aware of the program and how to apply for transfer.



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transfer. Because an inmate's circumstances may change within the 2-year period, we believe providing a more formalized reconsideration process will provide more opportunities for an inmate's consideration for transfer.

Although 97 percent of federal criminal cases are resolved by plea agreements, only 6 percent of the cases we reviewed included treaty transfer recommendations in plea agreements. We believe including treaty transfer recommendations, when appropriate, in plea agreements could increase participation by making inmates more aware of and interested in the program.

### **Recommendations**

To ensure inmates know they can obtain more information about why they were denied treaty transfer and have the opportunity to address issues that would make them better candidates for transfer, we recommend that:

6. the BOP and IPTU coordinate with each other to update the BOP's program statement to accurately reflect the process by which inmates can obtain more information from IPTU regarding the reasons for denial;
7. IPTU fully implement its plan to include in denial letters a description of how inmates can obtain further information regarding the reasons for denials, as well as information on what an inmate can do to become a better candidate for transfer, if applicable; and
8. IPTU fully implement its plan for a reconsideration process that requires IPTU analysts to follow up on the reasons an inmate's request was denied so that inmates whose circumstances change before the 2-year waiting period may reapply.

To ensure AUSAs are knowledgeable about the treaty transfer program and are aware of the option to include language in a plea agreement regarding the USAO's treaty transfer recommendation, we recommend that EOUSA:

9. work with IPTU to update information available to USAOs about the prisoner treaty transfer program through the

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EOUSA Intranet, updates to the USAM, or other appropriate means; and

10. provide USAOs with sample plea agreement language which explains that the USAO can agree to recommend or not oppose a transfer request while also making clear that the determination rests with IPTU and the USAO concession in the plea agreement does not bind IPTU.

To provide another means by which defendants are informed of the opportunity to apply for treaty transfer, we recommend that EOUSA:

11. work with IPTU to develop a strategy for communicating to the Federal Public Defender and the courts information about the availability of the program.

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### **CHAPTER III: FACTORS OUTSIDE OF THE DEPARTMENT'S CONTROL THAT LIMITED THE NUMBER OF INMATES TRANSFERRED**

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**The treaty transfer program is a voluntary program for the inmate and the treaty nation, and not all eligible inmates want to be transferred. Also, treaty nations do not approve all of the transfer requests that IPTU has approved. Treaty nations often are not timely in their approval of inmates that IPTU has approved for transfer. In addition, in FY 2010, about 22 percent of foreign nationals in BOP custody were from countries that did not have an inmate transfer treaty with the United States.**

**The treaty transfer program is a voluntary program for the inmate and the treaty nation, and not all eligible inmates want to be transferred.**

According to 18 U.S.C. § 4107, the treaty transfer program is a voluntary program and transfers must be approved by the United States (OEO), the inmate, and the treaty country. If inmates do not apply to the program or the inmate's country of citizenship does not approve the transfer, then there is nothing the Department can do to transfer the inmate through the treaty transfer program. In interviews, we were told by OEO, IPTU, and BOP staff that inmates may not want to return to their home countries for a number of reasons. The reasons included having no ties to the home country, believing prison conditions are better in the United States than in the home country, or hoping to remain in the United States after the prison sentence is served rather than being deported.

**Treaty nations do not approve all of the transfer requests that IPTU has approved.**

We found that some countries, such as Mexico and Canada, are reluctant to take back their inmate citizens. (See Appendix IX for a complete list by country of applications, approvals, and transferred inmates). For example, although IPTU approved the applications of 1,267 Mexican inmates for treaty transfer, only 766 inmates (60 percent) were transferred to Mexico from FY 2005 through FY 2010.

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Mexico's low approval rate for inmate transfers is attributed to two factors. First, the Mexican government has stated that its prisons are overcrowded. Second, as previously discussed, Mexico's criteria regarding what inmates it will take back limit the number of Mexicans transferred. OEO and IPTU officials told us the Department continues to express its concern over the restrictive criteria used by Mexico. The OEO and IPTU officials said the Department has made efforts to address Mexico's low approval rate, including annual discussions with Mexican officials, but has been unsuccessful in convincing Mexico to modify its criteria.<sup>79</sup> The IPTU Chief said, "We have expressed consistently that those criteria are unduly restrictive." She also explained that there is a second working group meeting held quarterly with Mexican embassy officials after a group of inmates is transferred. She added that these working group meetings are "more a nuts and bolts everyday working group" at which Mexico's criteria to accept inmates back are discussed.<sup>80</sup>

OEO's Director said that OEO and IPTU officials also met with Canadian officials to discuss the number of inmates Canada is willing to accept. OEO's Deputy Chief said there has been a decline in transfers to Canada. An IPTU analyst said that Canada used to take back all inmates approved for transfer, but that is no longer the case. We found that although IPTU approved 446 Canadian inmates' requests for treaty transfer from FY 2005 through FY 2010, 297, or 67 percent, were actually transferred. In a 2007 report to Congress, the Attorney General stated that the increase in the Canadian government's denials may be attributed to changes in the Canadian government.<sup>81</sup> According to the Correctional Service of Canada, transfers from the United States to Canada declined from 82 in FY 2006 to 37 in FY 2007.<sup>82</sup>

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<sup>79</sup> IPTU staff said that annual meetings with Mexican officials usually result in a slight increase in the number of inmates Mexico accepts, but the number accepted in subsequent transfers continues to be limited.

<sup>80</sup> Participants of these meetings include the representatives of the Embassy of Mexico, the Secretariat of Public Safety, Mexican Office of the Attorney General, U.S. Department of State, and the U.S. Department of Justice (IPTU and the BOP).

<sup>81</sup> Alberto Gonzales, Attorney General, Department of Justice, submission to the Committees on the Judiciary of the United States Senate and House of Representatives, concerning "The Effectiveness of the International Prisoner Transfer Treaties to which the United States was a party in FY 2005 and FY 2006" (April 2007).

<sup>82</sup> Correctional Service Canada, *Annual Report on the International Transfer of Offenders 2008-2009*, Annex "A" - Transfers to Canada by Fiscal Year, <http://www.csc->  
(Cont'd.)

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We also found that 71 inmates from Central American countries were approved for treaty transfer by IPTU, but only 54 percent were transferred from FY 2005 through FY 2010.<sup>83</sup> Overall, foreign country decisions not to allow their citizens to transfer to their home countries to serve their sentences limit the Department's ability to transfer willing inmates home.

**Treaty nations often are not timely in their approval of inmates that the Department has approved for transfer.**

Once IPTU and the treaty nation have approved an inmate's request for transfer, when the inmate actually will be transferred depends on the treaty nation. From FY 2005 through FY 2010, treaty nations took 288 days, on average, to approve the transfer of their nationals after IPTU had approved the inmates' requests.<sup>84</sup> These delays limit the number of inmates that can be transferred in a given year. According to IPTU data, from FY 2005 through FY 2010, IPTU approved 652 transfers, but then waited for over a year for the inmates' countries to adjudicate the applications. Of the 652 inmates, 427 (66 percent) were from Mexico, 105 (16 percent) were from Canada, and 120 (18 percent) were from 28 other countries. As a result, in some cases inmates completed their sentences and were released or withdrew their applications. Table 3 shows the outcomes of these cases and points out only 1 inmate had been approved and was awaiting transfer, while 78 were still waiting for a foreign country decision a year after IPTU had approved their transfer requests.

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[scc.gc.ca/text/prgrm/inttransfer/2008-09/2008-09-eng.shtml](http://scc.gc.ca/text/prgrm/inttransfer/2008-09/2008-09-eng.shtml) (accessed May 24, 2011).

<sup>83</sup> Central American countries include Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama.

<sup>84</sup> These are only requests that were approved by the foreign country. We did not have data on the date a foreign country denied a request.

**Table 3: Outcomes of Cases Approved by the Department that Waited for Foreign Country Decisions for Over 1 Year**

Outcome	Mexico	Canada	Other Countries
Approvals for transfer			
Prisoners transferred	0	0	0
Prisoner awaiting transfer	0	0	1
Outcomes other than approval for transfer			
Denied by foreign country	269	56	13
Withdrawal of previous U.S. approval due to impending release*	102	20	40
Prisoner released	13	20	36
Prisoner withdrew application	1	3	0
Still awaiting foreign country decision	42	6	30
<b>Total</b>	<b>427</b>	<b>105</b>	<b>120</b>

\* Prisoner was too close to the release date to make the transfer practical, so the Department withdrew its approval.

Source: IPTU.

The untimely processing of inmates by treaty nations results in prisoners who are approved for transfer by the United States spending more time in BOP custody. In many cases, the United States is required to withdraw its approval of inmates suitable for transfer because the treaty nations never approved the cases or did so too late to make transfers practicable.

**In FY 2010, about 22 percent of foreign nationals in BOP custody were from countries that did not have an inmate transfer treaty with the United States.**

One of the first eligibility criteria that BOP staff verify is an inmate's country of citizenship to determine if it is a treaty nation. Although the United States has treaties with 76 countries, it does not have treaties with countries well represented in the BOP's current inmate population (such as Colombia, Cuba, and the Dominican Republic). While the number of inmates from non-treaty countries has decreased from 17,438 in FY 2005 to 11,789 in FY 2010, these inmates still represented 22 percent of all foreign national inmates in 2010. Overall,

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these inmates represented 107 countries that did not have transfer treaties with the United States. OEO stated that the State Department favors the use of multilateral transfer treaties because bilateral treaties are costly, time consuming to negotiate, and are administered under different standards. Therefore, should a country choose to enter into a treaty transfer agreement, it must do so through the Council of Europe or the Organization of American States.

## **Conclusion**

Factors outside of the Department's control limit the number of inmates that can be transferred from the United States through the treaty transfer program. Because the program is voluntary, inmates have the option not to participate and the treaty countries have the option not to accept their citizens for transfer. In addition, those countries that have agreed to the transfer of their citizens often take a long time to do so. Further, a sizeable proportion of the BOP's foreign inmate population is not from treaty countries. To transfer them to their home countries would require the home countries to either join one of the multilateral treaties or to negotiate a new treaty, which is a costly and time consuming process. Finally, according to OEO, bilateral treaties sometimes result in differing standards that make it more difficult for the central authority to administer.

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## CHAPTER IV: TIMELINESS AND ASSOCIATED COSTS

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**Delays in the Department's processing of transferred inmates' applications resulted in unnecessary incarceration costs. We found that the BOP is not processing applications in accordance with its program statement's timeliness standards and IPTU is not evaluating applications for transfer within the time period expected by IPTU management. From FY 2005 through FY 2010, these delays in processing treaty transfer requests have resulted in additional costs to incarcerate foreign nationals who were ultimately transferred. However, JPATS transportation of inmates approved for transfer to departure locations is timely. In addition to savings from reducing processing delays, potentially significant savings are also possible from increasing the participation of eligible inmates in the treaty transfer program.**

Application packets for inmates eligible for treaty transfer are expected to be processed by the BOP and IPTU within a total of 160 days. The BOP and IPTU officials told us that the treaty transfer request, including processing the application packet, begins the date the inmate signs the transfer inquiry form indicating an interest in the program.<sup>85</sup> The BOP's Central Office must forward the packet to IPTU within 10 days of receiving it from the prison. IPTU does not have formal timeliness standards for approving or denying transfer requests, but IPTU management indicated that evaluating transfer requests should take no more than 3 months (90 days).

We found that during the 6-year period from FY 2005 through FY 2010, the actual average time to complete, review, and evaluate all requests for transfers was 351 days. The total time to complete application packets for the 1,425 inmates actually transferred was less – 269 days.<sup>86</sup>

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<sup>85</sup> The BOP's revised program statement specifies that the application packet must be forwarded within 60 days of the inmate's signing of the transfer inquiry form.

<sup>86</sup> There were 2,207 applications approved for transfer from FY 2005 through FY 2010.





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managers are correctional officers and that ensuring safety within the prisons is a higher priority than completing the application packets in 60 days. The Assistant Administrator, Correctional Programs Division, and the Senior Program Specialist both said the numerous roles case managers fulfill may distract them from processing applications.<sup>87</sup>

We also found that preparing transfer application packets is not consistently a priority for case managers. One case manager said he did not want to have to put together a transfer request packet and then have it denied. Another case manager said that every once in a while an application packet “will slip” past the 60-day requirement.

The Assistant Administrator and Senior Program Specialist said that the BOP does not analyze whether institutions are meeting the 60-day processing requirement because that should be part of the individual prison’s oversight process. The Senior Program Specialist said that if she happens to become aware of an application that has not been processed within 60 days she will call the case manager’s coordinator to “kind of light the fire.” She said that if a case manager does not complete the application after multiple requests, she contacts the unit manager who supervises the case manager. The Administrator, Correctional Programs Division, said she does not think the BOP can enforce timeliness standards because of extenuating circumstances, such as prison lockdowns, which require support from all prison personnel, including case managers who are also correctional officers.

When we spoke with IPTU staff about the BOP’s timeliness in processing applications, they provided examples of instances in which the 60-day requirement was not met. IPTU’s Deputy Chief said that, at times, an inmate’s attorney or consulate has informed IPTU that an inmate was interested in the program and IPTU has had to request an application packet from the BOP. An IPTU analyst said she had to request application packets from the BOP and that she had reviewed transfer inquiry forms that showed that long periods of time had elapsed between the inmate signing the transfer inquiry form and IPTU actually receiving the application packets from the BOP. In our case file review,

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<sup>87</sup> Case managers told us their responsibilities included an inmate’s intake screening; initial classification; custody classifications; program reviews; sentence computation; halfway house placement; release preparation; relocation; educational, recreational, religious programming; resolving fines with the courts; victim and witness notification; inmate discipline; inmate central file reviews and audits; inmate visitation; relieving correctional officers; acting as a team or unit supervisor; and conducting training.

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we found cases that took as long as 2 years for the application package to arrive at IPTU after the inmate signed the transfer inquiry form indicating an interest in transfer.

We also found that processing is sometimes delayed when application packets are lost in the system, but we were unable to determine how widespread this problem is. In reviewing e-mail correspondence between the BOP and IPTU, we found two references to missing BOP application packets. In one of those instances, the IPTU analyst said, “I hope we don’t have another missing application here.”

In contrast to prison application packet processing time, the BOP’s program statement states that the Central Office must forward requests to IPTU within 10 days, and we found that on average, requests are forwarded within 2 days. The Assistant Administrator said that when the Central Office receives an application packet from an institution, she and the Senior Correctional Program Specialist check that the required documents are included. The application packet then goes to a management analyst, who mails it to IPTU.

We attribute BOP case managers’ untimeliness in processing treaty transfer application packets to their prioritizing other responsibilities above treaty transfer, and we found no evidence of an oversight process for completing treaty transfer packets. We believe that the BOP should consider accountability measures to ensure that each case manager accurately prepares application packets in 60 days.

**IPTU is not evaluating applications for transfer within the time period expected by IPTU management.**

We found that IPTU has not established time guidelines for evaluating transfer applications. However, the IPTU Chief said, “In an ideal world, it is important that all cases be processed within 3 months of being assigned.” The IPTU Chief communicated the 3-month expectation to the IPTU staff on December 22, 2008, by e-mail. The IPTU Deputy Chief said IPTU’s 90-day timeframe was based on IPTU’s experience in evaluating requests and what it had found to be a reasonable amount of time for agencies to respond to IPTU requests for information. However, we found IPTU evaluates application packets in 140 days, on average.<sup>88</sup> (See Figure 5 for IPTU’s evaluation times year by year.)

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<sup>88</sup> Our analysis of IPTU’s processing time was based on the date IPTU received an application packet from the BOP to the date IPTU made a decision regarding the inmate’s transfer.



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workload distribution, not the timeliness of an analyst's evaluation of individual application packets.

We also found that IPTU analysts have other responsibilities that could reduce their ability to evaluate application packets within 90 days. The IPTU Deputy Chief said IPTU analysts use 2 of every 5 workdays to respond to inquiries about transfer requests from inmates and from inmates' attorneys, friends, and family members. IPTU analysts also communicate, meet, and train officials from countries having inmate transfer relationships with the United States; and coordinate the transfer of inmates to foreign authorities. The IPTU Chief said IPTU attorneys are liaisons between IPTU and the treaty nations and states with treaty transfer programs and must address any legal issues that arise in this context. She also said that IPTU's three Paralegal Specialists, who evaluate inmate transfer requests, are also responsible for the coordination of the consent verification hearings, *Freedom of Information Act* requests, and statistical reports of IPTU activity. IPTU's Deputy Chief said he is unsure how to speed up the evaluation process within IPTU because of the small staff and many responsibilities, as well as the time it takes USAOs and law enforcement agencies to respond to IPTU requests on specific transfer requests.<sup>90</sup>

We attribute some of IPTU's untimeliness in evaluating treaty transfer requests to a lack of analysts, the additional responsibilities analysts have to accomplish, as well as the lack of a system to track analysts' evaluation of application packets. We believe IPTU should implement a system to track IPTU analysts' evaluation of application packets. In response to the working draft of this report, IPTU instituted a formal requirement that analysts evaluate transfer applications within 90 days. In addition, IPTU has instituted a tracking system to monitor the progress of cases. The Director of OEO requested that the Criminal Division's Information Technology Management Office modify IPTU's databases to enable them to generate a report showing how long a case had been pending with each analyst.

USAO responses to IPTU are in compliance with Department policy.

An August 2, 2002, memorandum from the Criminal Division's Assistant Attorney General directed AUSAs to respond to IPTU's requests

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<sup>90</sup> IPTU's Chief said that IPTU would not be able to do what it does without interns. Although IPTU could not provide exact data, the OIG was told that from FY 2005 through FY 2010, IPTU generally had several unpaid undergraduate and law school interns on detail reviewing and processing transfer requests.

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for information within 3 weeks (21 days) of receiving the request.<sup>91</sup> In addition, Chapter 9-35.010 of the *United States Attorneys' Manual, Criminal Resource Manual 736*, states that “any relevant facts and recommendations that are requested by IPTU must be responded to no later than 3 weeks from the date the fax transfer request was sent from the IPTU.”<sup>92</sup>

We found that, much like IPTU analysts weigh suitability criteria differently, IPTU analysts also consider USAO responses to information requests differently. Some IPTU analysts said they will move forward with their evaluation of an inmate for transfer without a response from the USAO, but some will wait for a USAO response before making a recommendation for transfer. However, IPTU officials and staff also said their evaluation of application packets is delayed because of the time USAOs take to respond to IPTU requests on specific transfer requests. OEO's Director said that he believed that a large percentage of USAO responses took longer than the 3 weeks IPTU expected. The IPTU Deputy Chief said that AUSAs' trial schedules affect how long it takes for them to respond to IPTU. One IPTU analyst said she had to send multiple requests for information to USAOs, usually within 2 weeks of the original request. Another IPTU analyst said that she sends facsimiles to the USAO, waits about 2 weeks, and sends another facsimile with an “expedited - 2nd request” stamp. She said she also sends e-mails and calls the USAO's Criminal Chief.

In our review of a sample of 284 responses by USAOs, we found that 227 (80 percent) of USAO responses were within the 21-day requirement. However, 57 responses (20 percent) exceeded the 21-day requirement by an average of 65 days.

Although we found that 80 percent of the USAO responses to IPTU requests in our sample of case files were timely, we did not find a USAO

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<sup>91</sup> According to the USAM, after the expiration of this 3-week period, if IPTU has not heard from the affected USAO, IPTU will assume that the prisoner has no pending appeals or collateral attacks and that the USAO has no objection to the transfer. The USAM also states that this policy is intended to assist in avoiding unnecessary delays in processing transfer applications.

<sup>92</sup> Information on the treaty transfer program was last updated in the *United States Attorneys' Manual* in November 2002. Chapter 9-35.010, Introduction, also says, “generally, any relevant facts and recommendations that are requested by IPTU must be supplied promptly (which, absent compelling factors, is within ten days of the request).”

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response in 44 percent of the files.<sup>93</sup> We believe USAOs may not always respond to IPTU because the form sent to USAOs from IPTU requesting information does not reflect the USAM requirement that USAOs must respond within 21 days and does not state that failure to respond will be considered as no objection to the transfer request. In addition, while some IPTU analysts will move forward on their evaluation without a response from a USAO, others will delay their evaluation to wait for a USAO response. Our analysis of USAO responses to IPTU found that waiting for a USAO to respond could add as much as 2 months to an analyst's evaluation of an inmate's request to transfer, if the analyst receives a response at all. To improve the response rate from USAOs, IPTU should update its information request form to reflect the USAM requirement. Further, to avoid delays, IPTU analysts should proceed with processing applications upon expiration of the 21-day deadline.

Law enforcement agencies' responses to IPTU requests for information generally are timely.

IPTU officials and staff also said their reviews are delayed by the time law enforcement agencies take to respond to IPTU requests for opinions on transfer requests.<sup>94</sup> Although there are no timeliness requirements for law enforcement agencies to respond, the IPTU Chief said IPTU analysts are to consider the responses on the same standard as USAO responses (21 days). She said that when IPTU has met with law enforcement agencies "every once in a while," timeliness has been discussed, but no formal memorandum establishes timeliness standards. The information request form IPTU sends to law enforcement agencies does not specify a deadline for responding and does not state that failure to respond will indicate to IPTU that the law enforcement agency has no objection to the requested transfer. In our review of IPTU case files, we found law enforcement agencies responded to IPTU requests in 12 days, on average.<sup>95</sup> In our review of a sample of 306 law enforcement

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<sup>93</sup> Of the 511 cases we reviewed, we found no USAO response in 227 cases. We could not determine from the file whether the reason no response was provided was related to the lack of an inquiry from IPTU or attributable to the USAOs' failure to respond.

<sup>94</sup> The law enforcement agencies include Immigration and Customs Enforcement, Drug Enforcement Administration, Federal Bureau of Investigation, Bureau of Alcohol, Tobacco, Firearms and Explosives, United States Postal Service, and Coast Guard.

<sup>95</sup> Of the 511 cases, the team did not find a response from law enforcement agencies in 205 cases.

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responses, 25 (8 percent) exceeded the 21-day requirement by an average of 70 days.

### Conclusion

Based on our case file review, we conclude that the USAOs and law enforcement agencies, when they respond to IPTU requests for information, are generally timely. However, while some IPTU analysts will move forward on their evaluation without a response from a USAO, others will delay their evaluation to wait for a USAO response. In addition, since the information request forms sent to the USAOs and to law enforcement agencies do not specify a deadline to respond to IPTU or state that failure to respond will indicate the agency has no objection to the transfer, IPTU cannot ensure that it will receive a response in a timely manner or at all. As a result, we concluded the USAOs and law enforcement agencies contribute to but are not the primary factor causing delays in IPTU's evaluation of application packets. IPTU should update its information request forms to reflect a response deadline and note that failure to respond will result in IPTU assuming there is no objection to transfer.

### **JPATS transportation of inmates approved for transfer to departure locations is timely.**

In a sample of 224 inmates transported to departure locations by JPATS, we found that inmates arrived at the departure location at or before the established deadline.<sup>96</sup> According to JPATS data, on average, the inmate is transported 15 days after the prison makes the request. Of the 191 cases with a specific deadline, JPATS met the trip deadline, on average, 10 days ahead of schedule. However, seven cases exceeded the specified trip deadline by an average of 6 days. Overall, JPATS was timely.

### **From FY 2005 through FY 2010, delays in processing treaty transfer requests have resulted in additional costs to incarcerate foreign nationals that are ultimately transferred.**

We found that processing transfer requests within required or expected time standards would reduce incarceration costs. The OEO

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<sup>96</sup> Deadlines are established by the prison housing the inmate and requesting the inmate be moved. The deadline is established based on when the consent verification hearing is scheduled and when treaty nation representatives are available to pick up the inmate at the departure location.



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Director said there are obvious fiscal benefits to the treaty transfer program: if an inmate is transferred out of the BOP's system, the BOP no longer pays the costs for incarcerating the inmate. The IPTU Chief said that inmate transfer treaties create an economic benefit to the U.S. government by reducing the number of inmates confined in prisons and that for every inmate transferred the federal government recognizes a savings equal to the cost of imprisoning that person for the remainder of the inmate's sentence.

Although the BOP does not track the specific costs associated with completing and reviewing application packets for inmates applying for treaty transfer, the BOP did provide cost estimates for maintaining custody of a foreign national. (For detailed cost estimates provided by the BOP, see Appendix X.) Using the BOP's cost estimates, in FY 2010, the total cost to incarcerate foreign national inmates from treaty nations was \$1.01 billion.<sup>97</sup> We also found that from FY 2005 through FY 2010, the total cost to incarcerate foreign national inmates in the treaty transfer program, as indicated by interest on the treaty transfer inquiry form, was \$242 million, averaging \$34 million a year.<sup>98</sup>

As stated above, the average time to complete requests for transfer is 351 days rather than the 160 days set by BOP policy and IPTU expectations. We assessed the overall costs associated with incarcerating those foreign national inmates who were ultimately transferred beyond the established standard processing times for the BOP and IPTU to complete application packets and evaluate the suitability of the inmate. We found that, from FY 2005 through FY 2010, the additional costs incurred to incarcerate just those inmates ultimately transferred, because of delays in processing applications, beyond the standard times totaled about \$15.4 million. Approximately \$7.9 million of that amount was incurred during the time the BOP exceeded standards for completing and reviewing application packets, and about \$7.5 million was incurred during the time that IPTU exceeded standards for evaluating inmates' suitability for transfer. The average annual delay cost for the 1,425 inmates actually transferred was \$2.5 million, for a

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<sup>97</sup> Our calculation is based on an annual incarceration cost of \$25,627 per inmate in 2010 and includes 39,481 inmates. Our calculation excludes 1,170 inmates (out of the total 40,651 treaty nation inmates) that did participate in the treaty transfer program in FY 2010.

<sup>98</sup> BOP estimates indicate the annual cost for a non-citizen inmate averages \$21,984 at a low security prison, \$23,605 at a medium security prison, and \$22,323 at a contract prison.

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\$15.4 million total during the 6-year period of our review.<sup>99</sup> The funds spent housing and caring for inmates during the delays in processing the treaty transfer requests could have been put to better use in meeting other BOP expenses.

In response to a working draft of this report, the BOP stated that to calculate the cost associated with delays in processing transfer requests, the OIG should have used an annual marginal cost of \$9,187 per inmate, which the BOP defines as the direct care cost incurred by the BOP to house an inmate, which includes the cost of feeding, clothing, and providing medical care for an inmate. However, the BOP reported in the *Federal Register* that the fee to cover the average cost of incarceration for a single inmate was \$24,922 in FY 2007, \$25,895 in FY 2008, and \$25,251 in FY 2009.<sup>100</sup> Further, in FY 2010, the BOP used \$25,627 to justify its annual budget submission to the Department rather than marginal cost. Therefore, we calculated costs using the total average cost of incarceration (\$25,261) for the 6-year period of our review rather than the marginal cost proposed by the BOP.<sup>101</sup> Further, if we had used the marginal cost as the BOP proposed, the delay costs for the 1,425 inmates actually transferred during the 6-year period of our review would total \$5.4 million, which we believe is still substantial.

**Increased use of treaty transfers could provide cost savings and affect recidivism in the United States.**

Increasing the availability of treaty transfer to eligible inmates could produce substantial savings.

Increasing the number of inmates allowed to serve their sentences in their home countries has the potential to provide cost savings. First, the number of potentially eligible inmates from treaty nations that have not been given the opportunity to participate in the treaty transfer program may be considerable. As described previously, in our review of 52 cases in which the BOP had determined that interested inmates were ineligible, we found 9 cases (17 percent) in which BOP case managers

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<sup>99</sup> The estimates are daily costs only. They do not include additional institution-related expenses such as telephone charges, information technology support, and Central Office staff.

<sup>100</sup> Annual Determination of Average Cost of Incarceration; A Notice by the Prisons Bureau, 73 Fed. Reg. 33853 (Jun. 13, 2008); 74 Fed. Reg. 33279 (Jul. 10, 2009); 76 Fed. Reg. 6161 (Feb. 03, 2011).

<sup>101</sup> See Appendix VI for more detail on our methodology.

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may not have accurately applied the program eligibility criteria.<sup>102</sup> Although we do not project this error rate to the 67,455 requests denied by the BOP, it nonetheless shows that the number of interested inmates who could have been forwarded to IPTU may be large. Had those interested inmates' applications been forwarded to IPTU, some may have been determined suitable candidates for transfer. Moreover, we found that BOP case managers and inmates have limited knowledge of the treaty transfer program, and better educating BOP staff and inmates from treaty nations could increase the number of inmates who request to be transferred.

The potential cost savings from educating inmates and allowing more of them the opportunity to transfer to their home countries could be significant. As of FY 2010, there were 39,481 inmates from treaty nations in BOP custody who did not participate in the treaty transfer program. Not all of those inmates are appropriate transfer candidates and there are factors outside of the Department's control that could limit the potential cost savings, including the fact that the program is voluntary; treaty nations may not take back their citizens who are approved by the Department; and most importantly, Mexico has restrictions that prohibit the eligibility and suitability of Mexican inmates. However, if only 1 percent of the inmates (395) applied and were transferred to serve their sentences in their home countries, the BOP could potentially save \$10.1 million in annual incarceration costs.<sup>103</sup> Similarly, if 3 percent (1,184) or 5 percent (1,974) of the inmates applied and were transferred to serve their sentences in their home countries, the BOP could potentially save \$30.4 million or \$50.6 million, respectively, in annual incarceration costs. Further, reductions in prison populations would help to reduce the level of overcrowding in BOP facilities, which are currently 35 percent over capacity, according to the BOP.<sup>104</sup>

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<sup>102</sup> We selected a sample of 52 transfer requests rejected by the BOP for analysis. Our sample selection methodology was not designed with the intent of projecting our results to the 67,455 inmates determined ineligible for treaty transfer.

<sup>103</sup> The cost savings are based on an annual incarceration cost of \$25,627 per inmate in 2010. The potential incarceration savings calculation is based on 39,481 inmates because it excludes 1,170 inmates (out of the total 40,651 treaty nation inmates) that did participate in the treaty transfer program in FY 2010.

<sup>104</sup> Harley G. Lappin, Director, BOP, before the United States Sentencing Commission (March 17, 2011).

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Only a small percentage of inmates transferred to their countries of citizenship re-enter the United States and commit additional crimes.

The treaty transfer program seeks to transfer inmates that are less likely to return to the United States, and that has been the case with inmates transferred to date. To determine recidivism rates within the treaty transfer program, we asked the Federal Bureau of Investigation (FBI) for arrest data from its Interstate Identification Index (III) for 1,100 transferred inmates.<sup>105</sup> We then calculated the rate of recidivism based on the date of re-arrest within 3 years of the date of transfer. Based on these parameters, we found that of 1,100 foreign national inmates transferred during our 6-year review period, only 33 (3 percent) later returned to the United States and were re-arrested within a 3-year period. According to the FBI's III data, the crimes for which these individuals were arrested included immigration offenses, drug offenses, and assault offenses. Table 4 shows the number of inmates that returned to the United States and were re-arrested.<sup>106</sup>

**Table 4: Transferred Inmates Re-Arrested After Transfer, FY 2005 through FY 2010**

<b>Fiscal Year</b>	<b>Transferred</b>	<b>Re-Arrested</b>	<b>Percentage</b>
2005	243	2	1%
2006	199	3	2%
2007	197	8	4%
2008	157	8	5%
2009	153	8	5%
2010	151	4	3%
<b>Total</b>	<b>1,100</b>	<b>33</b>	<b>3%</b>

Source: IPTU and FBI data.

While some transferred inmates returned to the United States and committed additional crimes, we believe the 3-percent recidivism rate among treaty transfer inmates is comparatively low. We recognize that the 3-percent recidivism rate for transferred inmates applies only to

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<sup>105</sup> There were 1,425 inmates transferred, but we could match only 1,100 of them against the FBI's III, which is a database of criminal justice information that includes immigration violators.

<sup>106</sup> Twenty-two of the 33 inmates (67 percent) were from Mexico. The remaining inmates were from Canada (3), France (4), Israel (3), and Panama (1).

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crimes committed by those who returned to the United States and re-offended, and some others may have re-offended in their home countries or in third countries. Nonetheless, the effect is a relatively low incidence of recidivism within the United States by transferred inmates. In comparison, the overall recidivism rate for prisoners released into the United States is 68 percent, according to the Bureau of Justice Statistics.<sup>107</sup> Additionally, the OIG found that 73 of 100 criminal aliens who were released from state or local custody were arrested at least once after the date of release.<sup>108</sup> Consequently, we believe that increased use of treaty transfer has the potential to decrease recidivism in the United States.

Although we consider the 3-percent rate of recidivism of treaty transfer inmates to be low, IPTU officials believe it is too high. IPTU's Deputy Chief said that recidivism of any kind is a "political risk" to IPTU. He said that IPTU has to account to Congress, the U.S. Attorneys, and the public for the inmates that are transferred, return, and commit additional crimes. He added that recidivism of any kind makes it difficult to gain support from the AUSAs for future transfer requests or have the public support the program. While the OIG recognizes that increasing transfers could result in some increase in the number of prisoners who return to the United States and re-offend, the relative risk of releasing that same inmate population directly into the United States, or even deporting them to their home countries with no notice or control, represents a far greater risk.

## **Conclusion**

Delays in the processing of transferred inmates' applications have caused unnecessary incarceration costs to the Department. We attribute BOP case managers' untimeliness in processing treaty transfer application packets to their prioritizing other responsibilities over treaty transfer. We believe that the BOP should consider accountability measures to ensure that each case manager accurately prepares application packets in 60 days. In addition, we attribute IPTU's untimeliness in evaluating treaty transfer requests to a lack of analysts to address caseloads, additional responsibilities each analyst has, and

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<sup>107</sup> Bureau of Justice Statistics, *Recidivism of Prisoners Released in 1994* (June 2002).

<sup>108</sup> U.S. Department of Justice Office of the Inspector General, *Cooperation of SCAAP Recipients in the Removal of Criminal Aliens from the United States*, Audit Report 07-07 (January 2007).

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delays in waiting for USAO and law enforcement responses to information requests.

Given current practices, BOP and IPTU delays in processing applications and evaluating inmates' suitability for transfer cost \$15.4 million in added incarceration costs for inmates ultimately transferred from FY 2005 through FY 2010. The time for the BOP and IPTU to make determinations and complete overall case processing exceeds internal target time periods for inmates ultimately transferred. Reducing case processing time to the target time frames, even for the small number of inmates currently being transferred, would result in cost savings. Further, increasing the participation of inmates from treaty nations in the transfer program has the potential to result in significant cost savings.

We consider the 3-percent rate of recidivism of treaty transfer inmates to be low in comparison to the overall 68-percent recidivism rate for all prisoners released into the United States and the 73-percent recidivism rate of criminal aliens who were released rather than being removed to their home countries. Further, while the OIG recognizes that increasing transfers could result in some increase in the number of prisoners who return to the United States and re-offend, the relative risk of releasing that same inmate population directly into the United States, given the high recidivism rate for such inmates, or even deporting them to their home countries with no notice or control, represents a far greater risk.

### **Recommendations**

To minimize delays in processing treaty transfer requests and avoid the Department spending unnecessary funds such as the \$15.4 million incurred by the BOP and IPTU for processing delays, we recommend that:

12. the BOP establish reporting requirements to measure the timeliness for completing application packets at all prisons, including contract prisons, as a measurable element of case manager performance reviews;
13. IPTU fully implement formal timeliness requirements for evaluating treaty transfer requests and institute a system to track IPTU analysts' evaluation of application packets; and

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14. IPTU update its information request forms for USAOs and law enforcement agencies to request responses within 21 days and state that failure to respond will result in IPTU proceeding with its evaluation under the assumption the agency has no objection to the transfer.

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## CONCLUSION AND RECOMMENDATIONS

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Although the Department's treaty transfer program is an important program that could help the Department relieve overcrowding in the BOP's prisons, reduce incarceration costs, and facilitate inmates' rehabilitation into society, less than 1 percent of inmates from treaty nations in BOP custody were transferred in FY 2010. While we acknowledge that the number of inmates who are eligible or suitable for transfer is limited by restrictions established in the treaties, specifically those in the bilateral treaty with Mexico, we found that many inmates whose requests were denied were likely eligible to be transferred. We believe improvements can be made to more effectively manage and increase participation in the treaty transfer program.

First, the BOP does not communicate effectively with inmates about the treaty transfer program. Although the BOP appears to inform inmates about the program, the inmates often do not fully understand because of language barriers. The BOP must improve its ability to effectively communicate with foreign national inmates, particularly those who speak languages other than English, French, and Spanish. In addition, the BOP is not informing many inmates that were previously not interested in treaty transfer that they may still be eligible if they become interested in transfer. Also, the BOP does not remind those inmates whose requests were previously denied of re-application dates during program reviews. We think that by continually making the inmates aware of the treaty transfer program, whether through prison handbooks or verbal reminders, the BOP will be able to increase interest in the program and provide additional opportunities for those previously denied. By actively engaging inmates in conversation about the program in languages the inmates understand, we believe the BOP will provide inmates with more opportunities to learn about the treaty transfer program.

Further, in those instances where treaty provisions do not disqualify inmates, case managers may not be determining inmates' eligibility for treaty transfer correctly because the BOP's program statement does not accurately reflect eligibility requirements contained in the treaties. For example, our review of treaty transfer agreements found that only Mexican inmates are ineligible for treaty transfer if they have a collateral attack in progress, while inmates who are citizens of other nations are not subject to that provision, which is not explained in the BOP's program statement. Consequently, some inmates are improperly denied.



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While the BOP recognizes the need for changes in its treaty transfer program statement and has issued a revised program statement, the revised version does not address all the weaknesses we found. We believe any subsequent revisions to the program statement may take significant time to implement because it would require negotiation with the BOP's union. Any delay in implementation of an accurate program statement will result in unnecessary incarceration costs to the BOP for those inmates who might be determined eligible and ultimately approved for transfer. These issues must be addressed if more inmates are to be provided the opportunity to apply to the program.

Also, the BOP's treaty transfer training for case managers is inadequate. In addition, according to 28 C.F.R. Ch. 5 § 527.44, BOP management is only required to verify that the inmate is qualified for transfer. However, of the 18 prison management officials we interviewed, only two verified an inmate's eligibility. Further, BOP management's review of ineligible determinations was insufficient. Consequently we believe management should review both eligible and ineligible determinations.

Second, based on our analysis, we conclude that the criteria used by IPTU analysts to determine an inmate's suitability for transfer are applied inconsistently. We understand that IPTU must evaluate inmates on an individual basis. However, we believe IPTU should consider requiring its analysts to weigh the criteria they use in the same way. Each denial reason should be further defined, and the associated explanation should be carefully evaluated to ensure the reasons underlying the denial serve the fundamental purpose of the treaty transfer program. By doing so, we believe inmates will still be evaluated as individual cases while receiving the same weighted considerations as other candidates.

We found the denial letters in our sample of case files listed the reasons for denial but were not detailed. We believe that providing more detailed explanations in initial denial letters can ensure the inmates are better candidates when they next apply.

We believe that the lack of a standard reconsideration process presents additional barriers to transfer. Because an inmate's circumstances may change during the 2-year waiting period, we believe providing a formal reconsideration process will provide more opportunities for an inmate's consideration for transfer.

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Third, we found that USAOs rarely include treaty transfer recommendations in plea agreements and AUSAs are generally unfamiliar with the treaty transfer program. By including treaty transfer language in plea agreements, more foreign nationals may become aware of and interested in the program.

Fourth, factors outside of the Department's control limit the number of inmates that can be transferred through the program. Because the program is voluntary, inmates can choose not to participate and the treaty nations can decline to accept their citizens for transfer. In addition, those nations that agree to the transfer of their citizens took a long time to do so. Further, a sizeable number of foreign inmates are not from treaty nations. For example in 2010, 11,789 inmates (22 percent of all foreign national inmates) were not from treaty nations. For the non-treaty nation inmates to be given the opportunity to transfer would require new treaties to be negotiated, which we were told would be a lengthy and costly process.

We also found that the Department's processing of application requests was untimely and resulted in an additional \$15.4 million in incarceration costs for those inmates ultimately transferred. The time for the BOP and IPTU to make determinations and complete overall case processing exceeds internal target time periods for inmates ultimately transferred. We attribute BOP case managers' delays in processing treaty transfer application packets to their prioritizing other responsibilities over treaty transfer. The BOP should consider accountability measures to ensure that each case manager accurately prepares application packets in a timely manner. In addition, we attribute IPTU's delays in evaluating treaty transfer requests to a lack of analysts to address caseloads, the additional responsibilities each of the limited number of analysts has to accomplish, and analysts waiting for USAOs and law enforcement agencies to respond to information requests. IPTU should establish timeliness standards to encourage existing staff to ensure that processing applications in a timely manner is a priority. Reducing case processing time to the target time frames, even for the small number of inmates currently being transferred, would result in cost savings.

We conclude that the potential cost savings from educating inmates and allowing more of them the opportunity to transfer to their home countries could be significant. If only 1 percent of the inmates (395) applied and were transferred to serve their sentences in their home

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countries, the BOP could potentially save \$10.1 million in annual incarceration costs.<sup>109</sup> Similarly, if 3 percent (1,184) or 5 percent (1,974) of the inmates applied and were transferred to serve their sentences in their home countries, the BOP could potentially save \$30.4 million or \$50.6 million, respectively, in annual incarceration costs. While the majority of inmates may be ineligible, these estimates show that significant savings may be achieved with only modest increases in participation. Reduction in prison population also would help to reduce overcrowding in BOP facilities.

Finally, in considering the impact of the treaty transfer program on recidivism in the United States, we found the rate of recidivism for treaty transfer inmates to be low compared with the overall rate for prisoners released into the United States and for criminal aliens who were released rather than being removed to their home countries. While the OIG recognizes that increasing transfers could result in some increase in the number of prisoners in the program who return to the United States and re-offend, recidivism data show that the risk of releasing criminal aliens directly into the United States is far greater.

Below, we restate our overall recommendations for improving the treaty transfer program.

### **Recommendations**

To ensure inmates fully understand the treaty transfer program, we recommend the BOP:

1. make all documents related to the treaty transfer program available to staff on the BOP internal Intranet for all treaty nation languages; and
2. update its policies to require BOP staff to discuss the treaty transfer program at each program review.

To reduce erroneous determinations and ensure denials are limited to cases where transfer is inappropriate, and to ensure that the BOP's program statement is accurate, staff are trained on eligibility criteria,

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<sup>109</sup> The cost savings are based on an annual incarceration cost of \$25,627 per inmate in 2010. The potential incarceration savings calculation is based on 39,481 inmates because it excludes 1,170 inmates (out of the total 40,651 treaty nation inmates) that did participate in the treaty transfer program in FY 2010.

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and there is oversight of case manager eligibility decisions, we recommend that:

3. the BOP and IPTU coordinate to ensure that the BOP's program statement accurately reflects eligibility criteria based on treaty requirements and IPTU considerations, and that the BOP provide a revised program statement to its union for review;
4. the BOP ensure that all staff involved in treaty transfer determinations are properly trained; and
5. the BOP establish a process for reviewing eligibility determinations made by case managers to ensure their accuracy.

To ensure inmates know they can obtain more information about why their treaty transfer request was denied and have the opportunity to address issues that would make them a better candidate for transfer, we recommend that:

6. the BOP and IPTU coordinate with each other to update the BOP's program statement to accurately reflect the process by which inmates can obtain more information from IPTU regarding the reasons for denial;
7. IPTU fully implement its plan to include in denial letters a description of how inmates can obtain further information regarding the reasons for denials, as well as information on what an inmate can do to become a better candidate for transfer, if applicable; and
8. IPTU fully implement its plan for a reconsideration process that requires IPTU analysts to follow up on the reasons an inmate's request was denied so that inmates whose circumstances change before the 2-year waiting period may reapply.

To ensure AUSAs are knowledgeable about the treaty transfer program and are aware of the option to include language in a plea agreement regarding the USAO's treaty transfer recommendation, we recommend that EOUSA:

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9. work with IPTU to update information available to USAOs about the prisoner treaty transfer program through the EOUSA Intranet, updates to the USAM, or other appropriate means; and
  10. provide USAOs with sample plea agreement language which explains that the USAO can agree to recommend or not oppose a transfer request while also making clear that the determination rests with IPTU and the USAO concession in the plea agreement does not bind IPTU.

To provide another means by which defendants are informed of the opportunity to apply for treaty transfer, we recommend that EOUSA:

11. work with IPTU to develop a strategy for communicating to the Federal Public Defender and the courts information about the availability of the program.

To minimize delays in processing treaty transfer requests and avoid the Department spending unnecessary funds such as the \$15.4 million incurred by the BOP and IPTU for processing delays, we recommend that:

12. the BOP establish reporting requirements to measure the timeliness for completing application packets at all prisons, including contract prisons, as a measurable element of case manager performance reviews;
13. IPTU fully implement formal timeliness requirements for evaluating treaty transfer requests and institute a system to track IPTU analysts' evaluation of application packets; and
14. IPTU update its information request forms to USAOs and law enforcement agencies to request a response within 21 days and state that failure to respond will result in IPTU proceeding with its evaluation under the assumption the agency has no objection to transfer.

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**APPENDIX I: LIST OF TREATY NATIONS AND TERRITORIES AS OF  
DECEMBER 2010**

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Albania	Georgia	Netherlands
Andorra	Germany	Norway
Armenia	Greece	Palau
Australia	Guatemala	Panama
Austria	Honduras	Paraguay
Azerbaijan	Hungary	Peru
Bahamas	Iceland	Poland
Belgium	Ireland	Portugal
Belize	Israel	Romania
Bolivia	Italy	Russia
Bosnia and Herzegovina	Japan	San Marino
Brazil	South Korea	Saudi Arabia <sup>110</sup>
Bulgaria	Latvia	Serbia
Canada	Liechtenstein	Slovakia
Chile	Lithuania	Slovenia
Costa Rica	Luxembourg	Spain
Croatia	Macedonia (FYR)	Sweden
Cyprus	Malta	Switzerland
Czech Republic	Marshall Islands	Thailand
Denmark	Mauritius	Tonga
Ecuador	Mexico	Trinidad and Tobago
El Salvador	Micronesia	Turkey
Estonia	Moldova	Ukraine
Finland	Montenegro	United Kingdom
France	Nicaragua	Uruguay
		Venezuela

Territories that are not “countries,” according to IPTU:

- Hong Kong
- Netherlands Territories: Netherlands Antilles (Bonaire, Curacao, Saint Eustatius, Saba, and Saint Maarten) and Aruba
- Territories of the United Kingdom: Anguilla, Bermuda, British Indian Ocean Territory, British Virgin Islands, Cayman Islands, Ducie and Oeno Islands, Falkland Islands, Gibraltar, Henderson Island, Isle of Man, Montserrat, Pitcairn, Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus, and St. Helena, and Ascencion and Tristan da Cunha (formerly St. Helena Dependencies).

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<sup>110</sup> After our field work, the Kingdom of Saudi Arabia acceded to the OAS Convention on July 8, 2011.

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## APPENDIX II: TREATY TRANSFER PROCESS

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According to BOP policy, prison officials are required to explain the treaty transfer program to inmates during institution and unit admission and orientation (orientation).<sup>111</sup>

The program is also explained to inmates at the initial classification meeting with their case managers, but this is not policy. Once the treaty transfer program is explained to the inmates, they must sign a transfer inquiry form indicating whether they are interested in serving their sentences in their home countries.<sup>112</sup> If an inmate indicates an interest in the treaty transfer program, the treaty transfer request process, which includes preparing the application packet, begins on the date the inmate signs the transfer inquiry form.<sup>113</sup> Inmates can change their minds regarding their interest in the program at any time.

### Eligibility Requirements

- An inmate that is in custody for civil contempt may not be considered for transfer.
- An inmate with a committed fine may not be considered for transfer without permission from the imposing court.
- The inmate must have at least 6 months of the current sentence remaining to be served at the time of request for transfer.
- The judgment must be final; the inmate must have no pending proceeding or appeal upon the current conviction of sentence.

Source: BOP Program Statement 5140.39.

If an inmate indicates an interest and is considered eligible for treaty transfer based on the requirements outlined in the BOP program statement (see the text box), the inmate's case manager has 60 days to prepare an application packet, which is reviewed by officials at the

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<sup>111</sup> BOP policy requires three sessions upon an inmate's arrival: the *institution* orientation program at which inmates get general information regarding institution-wide regulations, operations, and program opportunities; the *unit* orientation program at which inmates get information that is specific to the unit where they reside; and the initial classification meeting between the inmate and the inmate's unit staff at which work and programming activities are developed for the inmate while incarcerated.

<sup>112</sup> The transfer inquiry form is available in English, French, and Spanish. It instructs inmates to contact their consulates so that the consulates can begin whatever parallel process may be required by the inmates' home countries to affect the transfer. See Appendix VI for the BP-S297 Transfer Inquiry Form.

<sup>113</sup> The BOP's revised program statement specifies that the application packet must be forwarded within 60 days of the inmate's signing of the transfer inquiry form.

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inmate's designated prison.<sup>114</sup> The application packet is then forwarded to the BOP's Central Office for review. The Central Office is required to forward application packets to IPTU within 10 days.<sup>115</sup>

When an application packet arrives at IPTU, it is entered into the tracking database and assigned to an analyst for evaluation. The analyst may contact the BOP, law enforcement agencies that investigated the inmate's criminal case, and the USAO that prosecuted the inmate for additional information. The analyst requests information about the case and the agencies' views on the transfer request. The analyst also contacts the Department of Homeland Security's Office of Citizenship and Immigration Services to determine the inmate's immigration status. Once this information gathering process is complete, the IPTU analyst prepares an application summary that provides the pertinent facts in the case, including information about the inmate, the offense, the sentence, the inmate's prior record, the location of the inmate's close family members, and the views of the federal prosecutor and investigating agencies. At the end of the application summary, the analyst makes a recommendation for transfer to IPTU's Chief. IPTU's Chief reviews the application summary and the analyst's recommendation. The IPTU Chief then forwards her transfer recommendation to the Office of Enforcement Operations' Deputy Director. The Director or the Deputy Director reviews the case materials and makes the final transfer decision. IPTU considers an inmate to be suitable for transfer if the transfer is consistent with the purpose and goals of the program and would not harm any law enforcement interests or concerns of the United States. The suitability determination is based on the facts and circumstances present in each case and is aided by the application of IPTU's guidelines.

Once IPTU has made a decision, it is communicated by letter to the inmate's country and to the inmate or the inmate's representative. If IPTU denies the transfer request, the reasons are summarized in a letter to the inmate. An inmate whose transfer request is denied can reapply 2 years after the date of the denial letter if at least 6 months remain on the inmate's sentence. IPTU may make exceptions to its 2-year policy if

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<sup>114</sup> The BOP's Administrator, Correctional Programs Division, said if a request is denied an inmate can appeal the decision through the BOP's Administrative Remedy Program. The purpose of the Administrative Remedy Program is to allow an inmate to seek formal review of an issue relating to any aspect of his or her own confinement.

<sup>115</sup> In those cases where a transfer request is made directly to IPTU, IPTU will forward the request to the BOP's Central Office, which will forward it to the inmate's prison so that the inmate can sign the transfer inquiry form and a case manager can prepare an application packet if the inmate indicates interest in transfer.



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the impediments to transfer are removed. For example, a pending appeal may be resolved or the need for an inmate's testimony may be satisfied. In such situations, IPTU can reconsider the request before 2 years have elapsed. If a request is approved, an approval packet is prepared by IPTU and sent to the receiving country, which must then consider the transfer request according to the terms of its treaty with the United States. The United States takes no further action on the case until the receiving country notifies the United States of its decision.<sup>116</sup> If the receiving country denies the request, the inmate should not reapply to the program through the Department since it has already approved the request. Instead the inmate must reapply directly to the home country.

If the receiving country approves the request, the BOP and IPTU arrange a consent verification hearing.<sup>117</sup> The consent verification hearing is conducted before a U.S. Magistrate Judge and is intended to ensure that the inmate understands and consents to the transfer. IPTU arranges for the Federal Public Defender to provide a legal representative for the inmate and contacts the USAO in the district where the inmate is incarcerated to obtain a writ of habeas corpus to move the inmate from the prison to the courthouse. Once the inmate consents to the transfer, IPTU notifies the receiving country that the inmate has consented and advises that country to coordinate travel arrangements with the BOP's Central Office. The BOP coordinates with the receiving country, which sends escorts to the United States to accompany the inmate on the return trip, and provides the foreign government with pertinent information about the inmate, including sentence administrative data, such as sentence computation and medical records.

When the BOP's Central Office and the receiving country have agreed upon a transfer date, the BOP moves the inmate to a departure institution through the USMS's JPATS. Departure locations serve as holding facilities until the inmate is transferred out of the country. BOP

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<sup>116</sup> If a foreign government fails to make a decision on a transfer request the United States has approved, when the inmate nears the projected release date, IPTU's policy is to withdraw its approval and notify the foreign government.

<sup>117</sup> This description is for non-Mexican and non-Canadian inmates. Some of the processing steps are different for Mexican and Canadians. Their consent verification hearings and transfers are held quarterly from set locations, while non-Mexican and non-Canadian inmates can have their verification hearing any time.

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staff at departure locations transport the inmate to the airport and release the inmate to the custody of the receiving country's escorts.<sup>118</sup>

Once inmates are transferred to receiving countries, they serve the remainder of their sentences in accordance with the laws and procedures of the receiving countries, including those governing the reduction of the term of confinement by parole or conditional release. The sentencing country, however, retains the power to modify or vacate the sentence, including the power to grant a pardon. Under most of the treaties, a receiving country, including the United States, will continue the enforcement of the imposed sentence.<sup>119</sup>

Figure 6 depicts the treaty transfer process.

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<sup>118</sup> Two departure locations also hold consent verification hearings for treaty transfer inmates on site. The USMS does not transport Mexican and Canadian inmates to consent verification hearings.

<sup>119</sup> Under the French and Turkish bilateral treaties and the *Council of Europe Convention on the Transfer of Sentenced Persons*, the receiving country has the option to convert the sentence, through either judicial or administrative procedure, into its own sentence. When a sentence is converted, the receiving country substitutes the penalty under its own laws for a similar offense. The receiving country, however, is bound by the findings of the facts insofar as they appear in the judgment, and it cannot convert a prison term into a fine or lengthen a prison term.





























































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## **APPENDIX IV: IPTU SUITABILITY REQUIREMENTS AND GUIDELINES**

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### A. Requirements

- (1) The inmate must be convicted and sentenced, and must consent to the transfer.
- (2) The inmate must have at least six months remaining to serve.
- (3) The judgment and conviction must be final. This means that there must be no pending proceeding by way of either a direct appeal or a collateral attack against either the judgment or the sentence.
- (4) There must be dual criminality. The crime for which the inmate was convicted in the United States must be an offense in the receiving country.
- (5) The sending and receiving country must approve the transfer, and in the case of an inmate in state custody, state authorities must also approve the transfer.

### B. Guidelines for Evaluating Prisoner Applications for Transfer

#### (1) Likelihood of social rehabilitation

Beyond the practical concerns of alleviating prison crowding and dealing administratively with foreign national inmates, many of whom have very limited English language ability, the central rationale behind transferring foreign inmates to their home countries is to facilitate the social rehabilitation. Rehabilitation is, of course, one of the principal purposes of incarceration in civilized societies. This goal is expressly stated in the Preambles to the COE Convention that transfer “further the ends of justice and social rehabilitation of sentenced persons.” Prisoner transfer assumes that such social rehabilitation is more likely to occur in the home country, closer to his family and within his own culture. In addition, since many foreign national inmates will be deported when their sentences have been served, it may not make sense to further their adjustment to a society in which they will not be allowed to remain after release.

In evaluating whether social rehabilitation really will be furthered by transferring an inmate, a number of factors are considered:

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(a) Acceptance of responsibility. The acceptance of responsibility is a condition precedent for rehabilitation. Acceptance of responsibility is a positive factor for transfer, and is demonstrated by cooperation with the authorities, providing complete and candid information as to involvement in the offense, and/or the timely entry of a guilty plea.

(b) Criminal history. For purposes of evaluating rehabilitative potential, there is a difference between a low-level, minor, first-time or infrequent offender, and a career criminal. Contrast, for example, the rehabilitative potential of an offender who was paid a few hundred dollars to drive drugs into the United States, with that of a drug kingpin.

(c) Seriousness of the offense. The seriousness of the offense, the critical factor in any sentencing decision, is equally important in evaluating whether serving out all or most of his sentence in the United States will do more for the inmate's rehabilitation than transferring him to what may be a less punitive and possibly less lengthy incarceration.

(d) Criminal ties to the sending and receiving countries. If an inmate has criminal ties to the receiving country, transferring him could well be more likely to facilitate reintegration into his criminal milieu than to facilitate rehabilitation into civil society.

(e) Family and other social ties to the sending and receiving countries. This is a critical factor for two reasons. First, it is an important assumption of the inmate transfer program that social rehabilitation is most likely near the inmate's family, and least likely far away. Second, the most likely prediction about the inmate's behavior upon release is that he will reunite with his family. If the inmate's family is in the receiving country, it is far more likely that he will stay there. If, however, that family is in the sending country, one must assume that the released inmate will try to return to the sending country, not only negating any social rehabilitation benefits from transfer but also negating the inmate's deportation as well.

There are obviously any number of family situations, and no one rule can control every case. Set out below is the general approach of the International Prisoner Transfer Unit when the inmate has family members residing in the United States:

(i) Prisoner is single and childless. Where his parents and siblings live will be controlling for this category (except in the

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unusual case where the inmate was raised by others in the receiving country);

(ii) Prisoner is ceremonially married. The location of the spouse is controlling. The presumption is that the inmate should be in the same country as his spouse;

(iii) Prisoner has a common law spouse. The location of the common law spouse can be very important, depending on the apparent longevity and stability of the common law relationship (that is, how close in practice the common law spouse is to a legal spouse) and whether any children, particularly still minor children, have issued from it (that is, how close the common law situation is to a traditional family);

(iv) Prisoner is either single or separated and has children. The inmate's relation to the children is critical. For example, adult children living on their own in the United States would normally be less of a factor against transfer than minor children in the United States. Minor children in the United States who have always lived with the other parent and never, or almost never, with the inmate would be less of a factor against transfer than minor children for whom the inmate had been the custodial parent or to whom the inmate had otherwise been very close; in these cases, it is generally assumed that transferring the inmate away from the children would not accomplish the social goals of transfer, and that the inmate would attempt to return to the children upon release.

(f) Transfers to third countries. Occasionally, transfer is sought by an inmate whose most significant ties are neither to the receiving country nor to the sending country, but are to third country with which the United States does not have a treaty. Such cases need to be carefully evaluated. If the receiving country will accept the inmate, if the inmate is not a major violator, and if incarceration there seems to be in the inmate's best interest, transfer will usually be permitted.

(g) Humanitarian concerns. "Humanitarian concerns" normally refers to the terminal illness of the inmate or a member of his immediate family. Occasionally, humanitarian concerns justify a transfer which would otherwise not be approved, so long as the transfer would not violate the treaty; an example of this would be the terminal illness of the inmate himself. Other times, humanitarian concerns are simply treated as another factor supporting transfer; an example of this would be the



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grave illness of a parent or child. Illnesses for which the inmate is being or could be treated in the United States, or the advanced age of parents, do not justify a transfer on humanitarian grounds.

(h) Length of time in the United States. Length of time in the sending country is an important social factor. If the inmate has been in the United States for such a long time that he has in fact become a member of this society, his social rehabilitation will not be facilitated by sending him to a different one.

(2) Law enforcement concerns

Social rehabilitation is not the only purpose of incarceration, and therefore cannot be the sole consideration in evaluating inmate transfer requests or take precedence over all other objectives. Law enforcement and justice concerns must also be considered, regardless of the possible consequences for the inmate's social rehabilitation. These considerations are the normal ones in any sentencing or parole decision:

(a) Seriousness of the offense. The more serious the offense, the more important the certainty of incarceration in the place it was committed becomes.

(b) Public sensibilities. Would the return of the inmate to a foreign country so outrage public sensibilities because of the extremely serious nature of the inmate's crimes or the circumstances surrounding the inmate's crimes as to outweigh the rehabilitation considerations?

(c) Public policy. Would the return of the inmate to a foreign country be contrary to the public policy of the United States?

(d) Reintegration and renewed criminal activity in receiving country. Are the inmate's ties to criminal elements in his home country such that his return there would simply facilitate a resumption of his criminal activity? Would transfer enhance the possibility of reprisal or intimidation.

(e) Possible sentencing disparity. When an inmate is transferred, responsibility for administering his sentence belongs exclusively to the receiving country. Under the COE Convention, the receiving country has the option of converting the sending country's sentence, through either a judicial or administrative procedure, into its own sentence; that is, the receiving country may substitute the penalty under its own laws for a similar offense. (There are certain limitations on converting the

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sentence. The receiving country is bound by the findings of facts insofar as they appear from the judgment, cannot convert a prison term into a fine, and cannot lengthen the prison term.) However, regardless of whether the sentence is continued or converted, responsibility for administering it rests solely with the receiving state.

(f) Law enforcement and prosecutorial needs in the sending country. These must be considered before transfer, since once the inmate is transferred, the sending country no longer has any authority or control over him. Before approving transfer, the sending country must therefore consider factors such as:

- (i) Is the inmate's testimony needed against codefendants?
- (ii) Are there fugitives in the inmate's case whose apprehension would require inmate's presence to help make the case against the them?
- (iii) Are there other open cases or investigations involving the inmate?
- (iv) Is there a need for further debriefing by law enforcement agents in the sending country?

(g) Unpaid court-ordered assessments, fines, or restitution. Because all supervisory authority over the inmate is terminated when the inmate transfers, financial obligations of the inmate need to be settled prior to transfer.

### (3) Likelihood of Return to the United States

Allowing a foreign national inmate to serve out the remainder of his United States sentence in his own country only makes sense if the inmate will remain in his own country after his release. Therefore, a critical consideration in evaluating a transfer request is whether in fact the inmate will stay in the receiving country, or will return to the sending country. A number of factors are considered in making this determination:

(a) Existing ties to the United States. This has been discussed in detail under Family and other social ties to the sending and receiving countries, above. The location of the inmate's family, his residence and domiciliary status in the United States and the receiving country (for example, does he still own a residence in the United States, does he have

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any obvious residence in the receiving country), whether he had a non-criminal occupation or professional career in the sending or receiving country, the relative proximity of the receiving country's borders to the United States and how easy or difficult it would be as a practical matter to return to the United States, and his immigration status, are all factors to take into account in determining whether the inmate would likely remain in the receiving country.

(b) Previous inmate transfer. If an inmate has previously been the beneficiary of a treaty transfer, he is ineligible for transfer. Reapplications after a previous transfer are always denied.

(c) Previous deportations and illegal reentries. Recent deportation(s) or numerous illegal entries into the United States will generally bar a treaty transfer.

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## APPENDIX V: INTERNATIONAL TREATIES AND TRANSFER REQUIREMENTS GOVERNING TREATY TRANSFER

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### Treaties

#### *Treaty on the Execution of Penal Sentences Between the United States and Mexico*

The treaty between the United States and Mexico was prepared, signed by Mexico, and forwarded to Congress in November 1976. Congress approved the treaty in 1977. The treaty stated that any Mexican citizen jailed in the United States could be sent, with his consent, back to Mexico to serve the remainder of his sentence; and any United States citizen jailed in Mexico could, with his consent, return to the United States to serve the remainder of his sentence.

#### *Council of Europe Convention on the Transfer of Sentenced Persons (the COE Convention)*

The United States agreed to participate in the Council of Europe in 1983, and the COE Convention was enacted on July 1, 1985. It was the first of the multi-lateral prisoner transfer treaties that the United States entered into. The COE Convention is the guiding document for the United States' treaty transfer of inmates to and from European countries.<sup>120</sup> The COE Convention's primary purpose is to facilitate the social rehabilitation of prisoners, as well as consider humanitarian reasons for transfer. The COE Convention also recognized that the lack of contact with relatives and language barriers may prove to be detrimental to the prisoner, thus, the council determined that prisoners would be best served by being incarcerated in their own society.

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<sup>120</sup> COE Convention countries include: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russia, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Turkey, Ukraine, United Kingdom, Australia, Bahamas, Bolivia, Canada, Chile, Costa Rica, Ecuador, Honduras, Israel, Japan, South Korea, Mauritius, Mexico, Panama, Tonga, Trinidad and Tobago, and Venezuela. Source: <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=112&CM=8&DF=&CL=ENG> (accessed November 16, 2011).

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*Inter-American Convention on Serving Criminal Sentences Abroad (the OAS Convention)*

The OAS Convention was adopted on April 12, 1996, and “entered into force” for the United States on May 25, 2001.<sup>121</sup> The OAS Convention states that its goals are to ensure improved administration of justice through rehabilitation of the sentenced person. It states that in order to meet these goals, “it is advisable that the sentenced person be given an opportunity to serve the sentence in the country in which the sentenced person is a national.” This agreement allows the United States to transfer offenders to and from 16 countries.<sup>122</sup>

Treaty Transfer Requirements

Prisoners who request to be transferred must meet basic eligibility requirements based on the international treaties:

- The inmate must be convicted and sentenced.
- The judgment must be final with no pending appeals or collateral attacks.
- The inmate must be a national of the receiving country.
- The inmate, the sentencing country, and the receiving country must all consent to the transfer.
- Dual criminality must exist (that is, the crime for which the inmate was convicted must also be a crime in the receiving country).
- A minimum period of time must remain on the sentence, typically at least 6 months.

Individual countries may have additional requirements. For example, the bilateral treaty with Mexico does not permit the transfer of offenders who have committed an immigration offense, become a

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<sup>121</sup> Inter-American Convention, <http://www.oas.org/juridico/english/sigs/a-57.html>.

<sup>122</sup> OAS Convention countries include: Belize, Brazil, Canada, Czech Republic, Chile, Costa Rica, Ecuador, El Salvador, Guatemala, Kingdom of Saudi Arabia, Mexico, Nicaragua, Panama, Paraguay, Uruguay and Venezuela. Source: <http://www.oas.org/juridico/english/sigs/a-57.html> (accessed November 16, 2011).

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domiciliary of the sentencing state, or are serving a life sentence.<sup>123</sup> In addition:

- Ten countries will not accept inmates committed for a military offense (Bolivia, Canada, France, Marshall Islands, Mexico, Palau, Panama, Peru, Thailand, and Turkey).
- Five countries will not accept inmates who have been sentenced to death (Bolivia, Marshall Islands, Palau, Panama, Peru, and Turkey).
- Two countries will not accept inmates sentenced for a political offense (Mexico and Turkey).

### **National and Department Policies Governing Treaty Transfer**

The legal requirements for transferring foreign nationals to their countries to serve sentences imposed by the United States are established through federal statutory and regulatory provisions. Below is a brief description of those provisions and related Department component policy.

#### Federal Statutes and Regulations

##### *Public Law 95-144*

Congress passed this legislation and it was signed into law by the President on October 28, 1977. The law establishes the framework and requirements for the treaty transfer program. Among the essential requirements of the statute are that a treaty must exist with the country to which the prisoner is seeking to transfer and the prisoner must be a national of that country. This law amended Title 18, United States Code, to add Chapter 306 – Transfer to or from Foreign Countries.

##### *18 U.S.C. §§ 4100 to 4115*

In 1977, Congress gave the Attorney General the authority to act on behalf of the United States to oversee the administration of the treaty transfer program. The provisions of these sections are only applicable

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<sup>123</sup> The Mexican transfer treaty has a specific definition of what is meant by becoming a domiciliary. Article IX(4) provides that, “A ‘domiciliary’ means a person who has been present in the territory of one of the parties for at least five years with an intent to remain permanently therein.”

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when there is a transfer treaty in place and to transfers of offenders to and from a foreign country pursuant to the treaty. Among other things, the sections also state that the offender must be a national or citizen of the country that the offender is going to and the offender must consent to the transfer. Finally, the sections state that an offender will not be transferred if an appeal or collateral attack upon the conviction is pending.

*28 U.S.C. § 2255*

In 1948, Congress enacted 28 U.S.C. § 2255 as a substitute for habeas corpus for federal prisoners.<sup>124</sup> 28 U.S.C. § 2255 allows federal prisoners to collaterally attack their convictions by filing a motion rather than a habeas petition in the district in which they were convicted and sentenced rather than in the district of their confinement.

*28 C.F.R. Part 0 Subsection Q § 0.96b*

In 1977, the BOP Director and his or her designees were authorized to receive custody of prisoners and to transfer prisoners to and from the United States under a treaty as referred to in Public Law 95-144.

*28 C.F.R. Ch. 5 §§ 527.40 - 527.46*

Sections 527.41 and 527.43-46 (enacted in 1981) and Section 527.42 (enacted in 1983) establish the BOP's role in the treaty transfer process and present the BOP's responsibilities in the treaty transfer process. The BOP's responsibilities include: (1) that BOP case managers will notify inmates of the program so that the inmates may have an opportunity to accept or decline, (2) wardens will verify that inmates are qualified for transfer and forward the applications to the Assistant Director, Correctional Programs Division, and (3) the Assistant Director will review the submitted material and then forward the applications to OEO. The Assistant Director is also responsible for notifying inmates whether OEO has decided in favor of or against the inmates' requests to transfer. Finally, if a request is approved, the Assistant Director will arrange for the inmate to have a consent verification hearing, take the

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<sup>124</sup> Habeas corpus can be defined as any of several writs originating at common law that are issued to bring a party before the court. The most commonly used of those writs is called habeas corpus ad subjiciendum, which is defined as an extraordinary writ issued upon a petition challenging the lawfulness of restraining a person who is imprisoned or otherwise in another's custody.

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inmate to a departure institution, and turn over the inmate to authorities from the inmate's country of nationality.<sup>125</sup>

*28 C.F.R. Part 0 Subsection K § 0.64-2*

This subsection, enacted in 2007, authorizes the Assistant Attorney General of the Criminal Division to determine whether the transfer of offenders to or from a foreign country under a treaty as referred to in Public Law 95-144 is appropriate or inappropriate. The Assistant Attorney General of the Criminal Division has delegated his authority to the Deputy Assistant Attorney General of the Criminal Division, the Director of OEO, and the Associate Directors of OEO.

Department Component Policy

*BOP Program Statement 5140.39*

The BOP's program statement, last revised on December 4, 2009, establishes policies and procedures to govern the BOP's administration of the treaty transfer program, including informing inmates about the program and determining an inmate's eligibility for treaty transfer. The program statement also contains a list of the countries that have transfer treaties with the United States. The program's objectives are stated as the following:

- all inmates will be notified of the treaty transfer program at the admission and orientation meeting,
- transfers will be voluntary and subject to both countries' approval,
- inmates with committed fines will only be transferred after receiving permission from the court, and
- eligible inmates will be transferred to or from foreign countries pursuant to the treaty.

The program statement also discusses what each level of BOP management is required to do. For example, the warden must forward the application packet to the BOP's Central Office within 60 days. Then, the Assistant Director, Correctional Programs Division, must review the application packet and forward it to IPTU within 10 days.

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<sup>125</sup> The BOP and Criminal Division are both involved with the consent verification hearing process at various stages.



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*IPTU Guidelines for the Evaluation of Transfer Applications of Federal Prisoners*

The treaty transfer program has no formal regulations that govern the considerations applied to prisoner transfer requests. IPTU has guidelines, implemented in February 2003, that are used to evaluate whether the inmate requesting treaty transfer is a suitable candidate. These guidelines set forth a number of factors that are considered in determining the suitability of prisoners for transfer, such as the likelihood of social rehabilitation, law enforcement concerns, and the likelihood that the inmate will return to the United States. IPTU's guidelines state that to determine the likelihood of social rehabilitation, IPTU evaluates an inmate's acceptance of responsibility for the offense, criminal history, seriousness of the offense, criminal ties to the sending and receiving countries', family and social ties to the sending or receiving country, whether the prisoner is a citizen of a treaty country, humanitarian concerns, and length of time in the United States.

However, because social rehabilitation is not the only reason an inmate is incarcerated, a number of law enforcement and justice concerns need to be considered when evaluating an inmate for treaty transfer. To evaluate law enforcement concerns regarding an inmate's incarceration, IPTU considers the seriousness of the inmate's offense, public sensibilities, public policy, possible sentencing disparity, and law enforcement or prosecutorial needs. Finally, IPTU evaluates the likelihood that the inmate will return to the United States because IPTU will allow an inmate to serve his sentence in his own country only if they are going to stay there after release. To determine the likelihood that the inmate will return to the United States, IPTU evaluates existing ties to the United States, any previous prisoner transfer, and previous deportations or illegal re-entries.

*Criminal Division Memorandum on the International Prisoner Transfer Program*

On August 7, 2002, the Assistant Attorney General of the Criminal Division issued a memorandum to all USAOs stating that it was critical that USAOs provide timely and meaningful responses to IPTU inquiries. The memorandum established a 3-week time frame for AUSAs to respond to IPTU requests for information. The memorandum stated that if an AUSA does not respond within the established 3 weeks then IPTU will assume that the USAO does not have any objection to the transfer and proceed with its review.

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The memorandum also dispels some misconceptions AUSAs had about the treaty transfer program. Those misconceptions included the belief that prisoners will serve lesser sentences in their home countries, lack of confidence in the Mexican prison system, and the likelihood that transferred prisoners will return to the AUSAs' jurisdictions and commit new crimes. The memorandum stated that most of these misconceptions were unfounded and should not be a reason for an AUSA to object to a transfer. Finally the memorandum warned against blanket USAO policies against recommending transfers, citing that such policies went against the United States' treaty obligations and Department policy.

### *United States Attorneys' Manual*

The USAM is a reference manual for United States Attorneys, AUSAs, and Department attorneys responsible for the prosecution of violations of federal law. It contains general policies and procedures relevant to the work of the USAOs. Title 9 of the USAM is the *Criminal Resource Manual*, which in Section 9-35.000 provides information on international prisoner transfers and the procedures that USAOs must follow.

Specifically, the manual describes the purpose of the treaty transfer program and the role of USAOs in the transfer program. The manual explains that most prisoner transfer treaties delineate some eligibility restrictions and that, in general, the prisoner must:

- be a citizen or national of the country to which he wishes to transfer;
- may not be a citizen of the United States;
- the offense for which the prisoner is incarcerated must be a crime under the laws of the receiving country;
- at least 6 months must remain on the sentence at the time of application; and
- there must be no appeal or other criminal proceeding still pending.

It also states that individual treaties have additional requirements for transfer.

In addition, the *Criminal Resource Manual* describes that administration of an inmate's sentence is transferred and the completion of the transferred offender's sentence is carried out in accordance with the laws and procedures of the receiving country, including the application of any provisions for reduction of the term of confinement by

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parole, conditional release, or otherwise. The manual also describes the treaty transfer application and review process, including that eligible inmates request transfer through the BOP, the BOP prepares an application packet, IPTU evaluates applications, and an OEO official makes a final decision to approve or deny transfer requests.

The *Criminal Resource Manual* also explains that inmates whose requests to transfer are denied are permitted to reapply for transfer in 2 years and that applications will be reconsidered before the 2 years have passed if extraordinary humanitarian reasons justifying a transfer arise or are discovered. Also, in the case of any defendant for whom the USAO expects to support an eventual treaty transfer, the manual states that it is advisable to alert defense counsel to the importance of resolving issues relating to the defendant's immigration status and of obtaining, where feasible, an order of deportation, either in the form of: (1) a stipulated administrative or judicial deportation order in connection with plea agreements or (2) a (non-stipulated) judicial order of deportation. Furthermore, the manual explains that once an inmate is approved for transfer, IPTU coordinates a consent verification hearing with the BOP, the Administrative Office of the United States Courts, and AUSAs. Finally, the *Criminal Resource Manual* provides a list of the countries with which prisoner transfer treaties are in effect.

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## APPENDIX VI: METHODOLOGY OF THE OIG REVIEW

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We reviewed whether the Department and its components are effectively managing the treaty transfer program for foreign national inmates. We reviewed federal laws and regulations; BOP program statements; BOP, OEO, and USMS policies and procedures; and written correspondence of recommendations between Department and component officials. We conducted case file reviews of inmates whose requests for treaty transfer were approved and inmates whose requests were denied, and we interviewed Department officials with the BOP, EOUSA, FBI, Criminal Division, USAOs, and USMS. The following provides additional information related to the methodology of our review.

### **Data Analysis**

#### Timeliness

To determine timeliness by the BOP and IPTU, we obtained data from the BOP to define a foreign national inmate's time "in the program." We defined "in the program" as the date the inmate signed the transfer inquiry form as listed in SENTRY to the date IPTU made a decision on the application. Using data the BOP and IPTU provided for their respective times to process transfer requests, we were able to calculate the number of days it took the BOP to process an inmate and IPTU to make a decision.

#### Costs

To determine the costs associated with incarcerating a foreign national inmate, the BOP provided data on daily and annual costs for prisons by security level. Using the "in the program" dates, we were able to calculate the number of days each participant in the program spent in a BOP prison from FY 2005 through FY 2010. Using the corresponding cost estimate the BOP provided for the security level of the prison, we were able to determine how much each inmate cost the BOP during his time in the program.

The cost data provided by the BOP represented the total annual and daily cost to cover the incarceration of an inmate, which is the same data the BOP provides to the Justice Management Division as justification for its annual budget submission, rather than the "marginal" cost recommended by the BOP and IPTU in response to a working draft of this report. Also, the Government Accountability Office (GAO) utilized

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the total costs provided by the BOP including “correctional officer salary, medical care, food service, and utilities” in a recent report.<sup>126</sup> Using these cost estimates, the GAO reported that the estimated annual cost to incarcerate criminal aliens in BOP facilities ranged from \$1.1 billion in 2005 to \$1.3 billion in 2009. Finally, the average annual cost used by the OIG was consistent with the BOP’s submission to the *Federal Register* as the fee to cover the average cost of incarceration for a single inmate.

To calculate the cost to the Department for delays in processing by the BOP and IPTU, we calculated the number of days to process each inmate’s application. From that total, we subtracted the number of days outlined in the BOP program statement (60 days) or IPTU expectation (90 days) from the total to obtain the number of days “over” the processing time. With that figure, we multiplied the daily average cost of incarcerating an inmate from FY 2005 through FY 2010 by the number of days over the expected timeliness standard in processing applications by inmates ultimately transferred in the program.

We limited our analysis to those inmates within the scope of our review, FY 2005 through FY 2010.<sup>127</sup> In addition, we calculated costs for those inmates in the treaty transfer program, which is defined as the date the inmate signed the transfer inquiry form to the date the inmate: (1) had his request approved by IPTU, (2) was transferred, or (3) remained in custody pending a decision by IPTU. In addition, our analysis includes the costs associated with the inmate at the inmate’s designated prison at the time of our data request. Therefore, our analysis does not include the costs for housing inmates if they were transferred to a different prison with a higher or lower security level or a medical facility during the course of our review. We also did not calculate the costs for inmates incarcerated while waiting on a foreign country decision because we did not have foreign country approval dates. These costs would increase or decrease the cost of maintaining a foreign national in BOP custody.

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<sup>126</sup> Government Accountability Office, *Criminal Alien Statistics: Information on Incarcerations, Arrests, and Costs*, GAO-11-187 (March 24, 2011).

<sup>127</sup> Inmates who were housed in a BOP prison and signed the transfer inquiry form before the start of our scope were included in our analysis because a decision to approve or deny an inmate was made by IPTU during FY 2005 through FY 2010.

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## Limited Sample of Ineligibility Determinations

We reviewed a small sample of ineligibility determinations made by the BOP from FY 2005 through FY 2010. Our sample was limited to 52 cases because the BOP's Office of Research and Evaluation stated that staff would have to do manual research to determine why each case was determined to be ineligible for a treaty transfer since this information is generally not available in SENTRY. Our sample selection methodology was not designed with the intent of projecting our results to the 67,455 inmates determined ineligible for treaty transfer.

### Case File Review

We conducted a case file review of Inmate Central Files for a sample of 167 case files from Low Security Correctional Institution (LSCI) Allenwood, Correctional Institution (CI) McRae, Federal Correctional Institution (FCI) Safford, and FCI Petersburg. The files were chosen using proportional random sampling based on country of citizenship data provided by the prison. The purpose of our Inmate Central File review was to obtain dates on the prison's process, including date of admission and orientation, first meeting with the case manager, and the dates of review by prison management.

We also reviewed 511 IPTU case files, chosen by the OIG's statistician using stratified random sampling based on IPTU decisions and country of citizenship, of inmates whose requests were approved, denied, or who had been transferred. The purpose of our IPTU case file review was to obtain dates on IPTU's process, including the date the USAO responded to IPTU requests, the date law enforcement agencies responded to IPTU requests, and the reasons supporting or opposing transfer. Our review of IPTU case files was based on the singular use of denial codes, although IPTU will deny an inmate's transfer request for more than one reason.<sup>128</sup>

When IPTU analysts evaluate inmates for suitability for transfer, they use criteria derived from the guidelines. In their recommendations for transfer, IPTU analysts justify their use of criteria in the application summary that is reviewed by IPTU management. We reviewed these justifications and found examples of inconsistent reasons for IPTU analysts' recommendations to approve or deny inmates for treaty

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<sup>128</sup> We found that IPTU denied transfer requests for a single reason 68 percent of the time, but it also denied transfer requests for more than one reason 31 percent of the time.

transfer. This has resulted in some inmates being disapproved while others in similar circumstances were approved. Some of the justifications we reviewed presented more than one criteria for approval or denial. Because IPTU can deny an inmate for multiple reasons, our analysis was limited to the individual justification for specific criteria. We analyzed and compared similar justifications that appeared in multiple recommendations for approval or denial of treaty transfer requests.

## Document Analysis

We reviewed guiding laws, treaties, and legislative history of the treaty transfer program. We also reviewed BOP program statements, training materials, correspondence between the BOP’s Central Office and BOP prisons, and treaty transfer program documents. In addition, we reviewed IPTU internal memoranda, evaluative guidelines, and denial codes. During our IPTU case file review, we analyzed case file documents and IPTU correspondence with analysts, USAOs, and law enforcement agencies.

## Interviews

Organization/Division	Position
<b>Federal Bureau of Prisons</b>	
BOP Headquarters	Assistant Director Correctional Programs Division
	Senior Deputy Assistant Director
	Administrator, BOP Correctional Programs Division
	Assistant Administrator, BOP Correctional Programs Division (x3)
	Senior Program Specialist, Correctional Programs Division (x3)
	Deputy Chief, Labor Management Relations
	Office of Information Systems IT Specialist
	National Institute of Corrections Representative
	Research Analyst
FCI La Tuna	Unit Manager and Treaty Transfer Coordinator
	Assistant Case Management Coordinator
Sea Tac	Case Management Coordinator
Metropolitan Detention Center, Los Angeles	Case Management Coordinator
FCI Ray Brook	Case Management Coordinator
FCI Texarkana	Case Management Coordinator
MCC New York	Security Officer
	Correctional Services Officer
FDC Miami	Supervisory Inmate Systems Specialist
BOP JPATS	Prisoner Transportation Coordinator

<b>Organization/Division</b>	<b>Position</b>
LCIS Allenwood	Associate Warden (x2)
	Case Management Coordinator
	Unit Manager (x2)
	Acting Warden
	Case Manager (x6)
	Inmates (x12)
CI McRae	Warden
	Associate Warden
	Case Management Coordinator
	Unit Manager (x7)
	Case Manager (x12)
	Chief Scheduler
FCI Petersburg	Case Manager (x5)
FCI Safford	Warden
	Associate Warden
	Case Management Coordinator
	Unit Manager
	A&O Coordinator
	Case Manager (x8)
	Inmates (x12)
<b>Office of Enforcement Operations</b>	
Office of Enforcement Operations	Director
	Deputy Chief
International Prisoner Transfer Unit	Chief
	Deputy Chief (x4)
	Program Analyst
	IPTU Attorneys (x4)
	Paralegal Specialist (x3)
	IPTU Data Representative
<b>United States Marshals Service</b>	
	Acting Chief, Prisoner Operations
	Chief, JPATS
	Chief of Scheduling
<b>Executive Office for the United States Attorneys</b>	
	Legislative Counsel
<b>Federal Bureau of Investigation</b>	
	FBI NCIC Unit Chief
<b>United States Attorneys' Offices</b>	
	Criminal Chief, Southern District of Texas
	Criminal Chief, District of Arizona
	Section Chief, District of Arizona (Phoenix)
	Section Chief, District of Arizona (Tucson)
	Criminal Chief, Central District of California
	Criminal Chief, Western District of Texas
	Criminal Chief, Middle District of Pennsylvania
	Criminal Chief, Southern District of Georgia
	Criminal Chief, Northern District of Mississippi
	Chief, Organized Crime Drug Enforcement Task Force, Southern District of California



<b>Organization/Division</b>	<b>Position</b>
	Criminal Chief, Eastern District of Virginia
	Criminal Chief, Southern District of California
	Criminal Chief, Northern District of Georgia
	Criminal Chief, Southern District of Florida
	Criminal Chief, Eastern District of California
	Criminal Chief, Western District of Washington
	Criminal Chief, Southern District of New York
<b>Non-DOJ Interviews</b>	
Administrative Office for the United States Courts	Chief of the Criminal Law Policy Staff

## Site Visits

The team conducted site visits to five prisons: FCI La Tuna, LSCI Allenwood, CI McRae, FCI Safford, and FCI Petersburg. At the recommendation of BOP staff, we visited FCI La Tuna to observe a consent verification hearing. We visited LSCI Allenwood at the recommendation of BOP and IPTU staff. We visited CI McRae because it is a contract institution with increasing involvement in treaty transfer over the last 3 years and has a highly diverse foreign national inmate population. We visited FCI Safford because of the number of applications for transfers to Mexico it produced from FY 2005 through FY 2010.

While on our site visits, we encountered difficulties at three prisons. At LSCI Allenwood, case managers initially would not speak to our team without union representation. The union's president told us that he could be excused from interviews only by the warden. However, at the time of our visit, the warden was not available. At FCI Safford, we learned that case managers were provided a "quiz" by institution management on the treaty transfer program to prepare for our visit. Because of this quiz, we decided to conduct a 1-day site visit to another prison with inmates who applied to the treaty transfer program. We chose FCI Petersburg because of the number of inmates in the treaty transfer program and its proximity to Washington, D.C. During our case file review at FCI Petersburg, we discovered an inmate's case file with a Transfer Inquiry Form dated and signed by the inmate the day of our visit. This inmate's request had previously been denied, but the inmate's case file was missing his application packet, indicating that institution staff had checked the case files prior to our arrival and had made adjustments to ensure that all treaty transfer documents were in place and correctly dated. These actions may have corrected problems, or provided the staff we interviewed with knowledge they did not have previously, which could have prevented the OIG from identifying further shortcomings. We also later learned that case managers at FCI

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Petersburg were asked by the Case Management Coordinator to “PLEASE read the program statement on treaty transfer” and to “Please know the policy.” Case managers were told the “OIG is doing an audit and will be interviewing all case managers.”





**APPENDIX IX: TOTAL APPLICATIONS, APPROVED APPLICATIONS,  
AND NUMBER OF INMATES TRANSFERRED BY COUNTRY AS OF  
SEPTEMBER 2010**

<b>Country</b>	<b>Total Applications</b>	<b>Approved Applications*</b>	<b>Percentage Approved</b>	<b>Number of Inmates Transferred</b>
ALBANIA	12	0	0%	0
ARMENIA	3	0	0%	0
ARUBA	4	3	75%	3
AUSTRALIA	7	3	43%	0
AZERBAIJAN	1	0	0%	0
BAHAMAS	185	57	31%	45
BELGIUM	4	0	0%	0
BELIZE	33	5	15%	4
BERMUDA	16	7	44%	3
BOLIVIA	9	1	11%	1
BOSNIA AND HERZEGOVINA	3	0	0%	0
BRAZIL	14	1	7%	0
BRITISH VIRGIN ISLANDS	2	0	0%	0
BULGARIA	4	1	25%	1
CANADA	909	446	49%	297
CAYMAN ISLANDS	2	0	0%	0
CHILE	6	1	17%	1
CHINA*	1	1	100%	0
COLOMBIA*	7	1	14%	1
COSTA RICA	23	7	30%	4
CROATIA	1	0	0%	0
CUBA*	3	0	0%	0
CZECH REPUBLIC	1	1	100%	1
DENMARK	2	1	50%	1
DOMINICAN REPUBLIC*	13	5	38%	4
ECUADOR	40	14	35%	11
EL SALVADOR	36	0	0%	0
FINLAND	1	0	0%	0

<b>Country</b>	<b>Total Applications</b>	<b>Approved Applications*</b>	<b>Percentage Approved</b>	<b>Number of Inmates Transferred</b>
FRANCE	23	10	43%	10
GERMANY	44	22	50%	19
GREECE	10	1	10%	0
GUATEMALA	72	11	15%	2
GUYANA*	1	0	0%	0
HONDURAS	62	15	24%	0
HONG KONG	5	1	20%	1
HUNGARY	2	0	0%	0
ICELAND	1	0	0%	0
INDIA*	4	2	50%	2
IRAN*	1	0	0%	0
IRAQ*	1	1	100%	1
IRELAND	6	1	17%	1
ISRAEL	81	31	38%	26
ITALY	47	7	15%	7
JAMAICA*	6	1	17%	0
JAPAN	3	1	33%	0
KENYA*	1	0	0%	0
DEMOCRATIC PEOPLES REPUBLIC OF KOREA (NORTH KOREA)*	1	0	0%	0
REPUBLIC OF KOREA (SOUTH KOREA)	9	4	44%	1
LATVIA	2	1	50%	1
LEBANON*	4	3	75%	2
LITHUANIA	1	0	0%	0
MACEDONIA	4	0	0%	0
MARTINIQUE*	1	1	100%	1
MEXICO	4731	1,267	27%	766
MOLDOVA	2	1	50%	0
MONTENEGRO	2	0	0%	0
MONTSERRAT	1	0	0%	0
NETHERLANDS	72	57	79%	49
NETHERLANDS ANTILLES	16	10	63%	8

Country	Total Applications	Approved Applications*	Percentage Approved	Number of Inmates Transferred
NEW ZEALAND*	2	0	0%	0
NICARAGUA	49	5	10%	5
NIGERIA*	3	2	67%	1
NORWAY	3	1	33%	0
PAKISTAN*	2	1	50%	0
PANAMA	81	28	35%	23
PARAGUAY	1	0	0%	0
PERU	33	6	18%	5
POLAND	29	9	31%	8
PORTUGAL	10	3	30%	2
REPUBLIC OF PALAU	1	1	100%	0
ROMANIA	12	1	8%	1
RUSSIA	6	2	33%	2
SERBIA	1	0	0%	0
SOUTH AFRICA*	1	0	0%	0
SPAIN	48	27	56%	20
SURINAME*	1	1	100%	1
SWEDEN	4	1	25%	0
SWITZERLAND	6	1	17%	1
THAILAND	5	1	20%	0
TONGA	10	0	0%	0
TRINIDAD AND TOBAGO	25	6	24%	5
TURKEY	9	3	33%	3
UKRAINE	11	2	18%	1
UNITED KINGDOM	97	34	35%	29
UNITED STATES OF AMERICA*	88	9	10%	5
URUGUAY	1	0	0%	0
VENEZUELA	160	53	33%	36
VIETNAM*	6	2	33%	2
YUGOSLAVIA <sup>a</sup>	2	1	50%	1
<b>Total</b>	<b>7,265</b>	<b>2,203</b>	<b>30%</b>	<b>1,425</b>

\* Not a treaty nation.

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<sup>a</sup> Two inmates indicated Yugoslavia as their country of citizenship and requested transfer to Serbia and Montenegro, two treaty nations that were once part of Yugoslavia.

<sup>b</sup> Although Hong Kong and some territories of the United Kingdom and the Netherlands (e.g., Aruba, Bermuda, Cayman Islands, and Netherlands Antilles) are not “countries,” these geographical entities are listed separately as if they were countries because these territories require specific transfer applications and the applicants are approved only for transfer to that particular territory.

Notes: There were four missing Approved Cases and nine missing Denied Cases.

The list of countries in Appendix IX does not match the transfer treaty partners of the United States as it includes countries that are not transfer treaty partners and omits two countries (Austria and Slovenia) which are transfer partners. The reason for this is that the information provided to the OIG listed treaty transfer applicants by country of *citizenship*, not country of *nationality*. That data was provided by both the BOP and IPTU because each utilizes citizenship data to assess eligibility for transfer. Individuals shown as citizens of non-treaty nations would have been transferred to a treaty nation of which they were a national, but this information was not available to the OIG. Additionally, inmates could be dual citizens. Because some applicants applied and were approved prior to the period of review yet transferred during the period of review, the prisoners transferred for some countries will not be the same as the prisoners who applied in that period.

Sources: BOP and Criminal Division’s IPTU.





























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## **APPENDIX XII: OIG ANALYSIS OF THE FEDERAL BUREAU OF PRISONS RESPONSE**

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The Office of the Inspector General provided a draft of this report to the Federal Bureau of Prisons (BOP) for its comments. The report contained 14 recommendations for consideration. Recommendations 1, 2, 4, 5, and 12 are directed to the BOP. Recommendations 3 and 6 are directed to both the BOP and the Criminal Division and require a response from both components.

The BOP provided its response to the report's recommendations and general comments on report findings that it had significant disagreement or technical comments. The BOP's response is included in Appendix XI of this report. Actions necessary to close the recommendations, as well as the OIG's analysis of the BOP's general comments are discussed below.

### **OIG'S ANALYSIS OF THE BOP'S RESPONSE TO RECOMMENDATIONS**

**Recommendation 1. Make all documents related to the treaty transfer program available to staff on the BOP internal Intranet for all treaty nation languages.**

**Status.** Resolved – open.

**Summary of the BOP Response.** The BOP concurred with this recommendation and stated that applicable forms are available in Spanish and that the BOP has begun the process of having the documents and forms related to the transfer program translated into all languages associated with the approved treaty nations. Further, the BOP will notify the wardens of the existence of the translated documents as they are completed, and those documents will be made available on the BOP's Intranet.

**OIG Analysis.** The actions taken by the BOP are responsive to our recommendation. By February 29, 2012, please provide the OIG with a screen shot of the Intranet's collection of documents and forms related to the transfer program translated into all languages associated with the approved treaty nations or a status report on the BOP's progress. Also, please provide copies of the notification memoranda provided to the wardens upon completion of the language translation.

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**Recommendation 2. Update its policies to require BOP staff to discuss the treaty transfer program at each program review.**

**Status.** Resolved – closed.

**Summary of the BOP Response.** The BOP concurred with this recommendation and stated that Program Statement 5140.40, Transfer of Offenders To or From Foreign Countries, dated August 4, 2011, directs case managers to discuss the transfer program at the inmate's initial classification and at every subsequent program review. Further, the discussion of the transfer program at the initial classification and subsequent program reviews is required to be documented in the inmate's central file. The BOP requested that this recommendation be closed.

**OIG Analysis.** Based on the actions taken by the BOP to update its policies to require BOP staff to discuss the treaty transfer program at each program review, this recommendation is closed.

**Recommendation 3. The BOP and IPTU coordinate to ensure the BOP's program statement accurately reflects eligibility criteria based on treaty requirements and IPTU considerations, and the BOP provide a revised program statement to its union for review.**

**Status.** Resolved – open.

**Summary of the BOP Response.** The BOP concurred with this recommendation and stated that it would coordinate with the IPTU to ensure the program statement accurately reflects eligibility criteria based on treaty requirements and IPTU considerations. The BOP also stated it would, if necessary, provide a revised program statement to the Bureau of Prisons Council of Prison Locals/American Federation of Government Employees (Union) for review by January 2012.

**OIG Analysis.** The actions taken by the BOP are responsive to our recommendation. Please provide a revised program statement or a status report regarding meetings with IPTU, an agenda or topics of discussion for each meeting, as well as a description of how eligibility criteria based on treaty requirements and IPTU considerations will be addressed in a revised program statement by February 29, 2012.

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**Recommendation 4. The BOP ensures all staff involved in treaty transfer determinations are properly trained.**

**Status.** Resolved – open.

**Summary of the BOP Response.** The BOP concurred with this recommendation and stated that refresher training on the treaty transfer program will be provided to staff involved in transfer eligibility determinations by March 31, 2012. Specifically, the training will focus on educating staff on the eligibility criteria to be used in making treaty transfer determinations. In preparation for the refresher training, the BOP has already begun modifying a lesson plan to use in the training.

**OIG Analysis.** The BOP's actions are responsive to this recommendation. However, until the BOP coordinates with IPTU to ensure the BOP's program statement accurately reflects eligibility criteria based on treaty requirements and IPTU considerations, and the BOP provide a revised program statement to its union for review, this training may be premature. Nonetheless, please provide the OIG with a copy of agendas, lesson plans, and other training materials to be used to educate staff on treaty transfer by February 29, 2012. These materials should reflect any revisions that have been made to eligibility criteria based on treaty requirements and IPTU considerations after consultation with IPTU in response to Recommendation 3.

**Recommendation 5. The BOP establishes a process for reviewing eligibility determinations made by case managers to ensure their accuracy.**

**Status.** Resolved – open.

**Summary of the BOP Response.** The BOP concurred with this recommendation and stated that it will begin the process to amend Program Statement 5140.40, dated August 4, 2011, to include a process for supervisors to review eligibility determinations made by unit management staff. The BOP also stated that the form used to review and certify eligibility determinations (the transfer inquiry form) has been updated to require supervisory review and signature. Further, the BOP stated that the transfer inquiry form will be provided to the union for review along with the revised program statement by October 2012.

**OIG Analysis.** The BOP's actions are responsive to this recommendation. However, we believe that the program statement should be submitted to the union prior to October 2012, as the

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negotiation process is lengthy. We ask that the BOP provide the OIG with a revised program statement and transfer inquiry form or a status report on its progress by February 29, 2012.

**Recommendation 6. The BOP and IPTU coordinate with each other to update the BOP's program statement to accurately reflect the process by which inmates can obtain more information from IPTU regarding the reasons for denial.**

**Status.** Resolved – open.

**Summary of the BOP Response.** The BOP concurred with this recommendation and stated that it would coordinate with IPTU to ensure the program statement accurately reflects the process by which an inmate can obtain more information from IPTU regarding the reasons for denial. The BOP has forwarded Program Statement 5140.40, dated August 4, 2011, to IPTU for its review and recommendations. The BOP also stated that if necessary, it would provide a revised program statement to the union for review by October 2012.

**OIG Analysis.** The actions suggested by the BOP are responsive to our recommendation. Please provide a status report regarding meetings with IPTU, an agenda or topics of discussion for each meeting, as well as a description of how the BOP's program statement will be revised to accurately reflect the process by which inmates can obtain more information from IPTU regarding the reasons for denial by February 29, 2012.

**Recommendation 12. The BOP establish reporting requirements to measure the timeliness for completing application packets at all prisons, including contract prisons, as a measurable element of case manager performance reviews.**

**Status.** Resolved – open.

**Summary of the BOP Response.** The BOP concurred with this recommendation and provided revised Program Review Guidelines for Institution Correctional Programs, updated June 3, 2011, that include reporting requirements for staff on the completion of the transfer program application packets. The BOP further stated that the revised guidelines require program review staff (the agency's internal auditors) to review the central files of inmates who have a SENTRY assignment of Inmate Treaty Transfer to determine whether: (1) the transfer application packet has been completed on time, (2) the decision regarding program



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eligibility was made correctly, and (3) the inmate was informed and notified about the transfer program during initial classification and subsequent unit management reviews. The BOP requested this recommendation be closed.

**OIG Analysis.** The BOP's actions are responsive to this recommendation. By February 29, 2012, please provide the OIG with a copy of a review conducted by the program review staff to determine whether: (1) the transfer application packet has been completed on time, (2) the decision regarding program eligibility was made correctly, and (3) the inmate was informed and notified about the transfer program during initial classification and subsequent unit management reviews.

### **THE BOP'S COMMENTS ON REPORT FINDINGS**

**Finding:** Overall, the BOP and IPTU, combined, rejected 97 percent of requests from foreign national inmates because they determined the inmates were ineligible or not suitable for transfer.

**BOP Response:** The BOP disagreed with our finding and stated that the finding "inaccurately portrays the role of the Bureau and implies that we 'reject' requests for transfer." The BOP also stated that its role in determining eligibility and suitability for the transfer program is limited. The BOP said that it reviews inmate requests to determine if the inmate satisfies the basic and essential requirements of the applicable treaty agreement. The BOP stated that while it does not have the authority to reject an inmate's transfer request, BOP staff are required to notify inmates of their apparent ineligibility. The BOP requested that the OIG remove from the report references to the BOP "rejecting" requests for participation in the program.

**OIG Analysis:** We disagree with the BOP's statement that the term "reject" inaccurately portrays the role of the BOP in the program and that its role in the treaty transfer process is limited. We found that based on its program statement, the BOP exercises decision making authority when assessing the inmates' eligibility to apply for transfer to their home countries. This requires BOP staff members to make judgments regarding such things as an inmate's country of citizenship when the inmate lacks a birth certificate or an inmate's appeal status. If the BOP staff member does not find the inmate to be eligible, the BOP does not forward an application regardless of the inmate's interest. Thus, the program statement ultimately gives the BOP staff the authority to reject an inmate's request to apply for the treaty transfer program. In addition, removing references to the term "reject" would suggest that the

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BOP forwards all applications from interested inmates regardless of qualification for the program. This would be inaccurate. As we show in this report, the BOP determines that inmates requesting to apply for transfer are ineligible approximately 90 percent of the time, and those determinations are sometimes in error. Consequently, we did not remove the term “reject” because we believe that doing so would result in an inaccurate portrayal of the BOP’s role in the treaty transfer consideration process.

**Finding:** The Department incurred \$15.4 million in unnecessary incarceration costs from FY 2005 through FY 2010 because of the BOP’s and IPTU’s untimely processing of requests for inmates ultimately transferred.

**BOP Response:** The BOP disagreed with our finding and stated that incorrect figures were used to conclude the Department incurred \$15.4 million in unnecessary costs. The BOP stated that its “marginal” costs should be used to calculate the cost of incarcerating offenders rather than the “full” costs used by the OIG. The BOP explained that due to the extreme level of crowding in its facilities, it uses marginal costs when computing cost avoidance with a reduction in the inmate population. The BOP stated that the Department and Office of Management and Budget only fund BOP population increases at marginal cost levels. The BOP stated that marginal costs include all costs associated with housing an inmate other than staff salaries and benefits and that full costs include all costs associated with housing an inmate, including staff salaries and benefits, as well as regional and Central Office support costs. According to the BOP, the avoidance of full costs cannot occur until staff can be reduced, thereby avoiding the salary costs. The BOP stated that at its current level of understaffing and overcrowding, the inmate population would need to be reduced by more than 30,000 inmates, bringing crowding down to the target of 15 percent before staff could begin to be reduced and an amount close to the full costs could be avoided. The BOP stated the report should be amended to reflect marginal costs and that computations of potential savings should be done using marginal costs.

**OIG Analysis:** While the OIG recognizes that overcrowding is a significant issue for the BOP, we do not believe that using only marginal costs would provide an accurate representation of the potential cost savings associated with the treaty transfer program. First, we believe that removing salary and support costs would be inaccurate because it would mean that adding inmates above capacity does not result in any requirement to increase staff supervision or Regional and Central Office

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support. Second, the BOP reported in the *Federal Register* that the fee to cover the average cost of incarceration for a single inmate was \$24,922 in FY 2007, \$25,895 in FY 2008, and \$25,251 in FY 2009.<sup>129</sup> Finally, in FY 2010, the BOP used \$25,627 to justify its budget to the Department. Therefore, we calculated and used the average cost of incarceration (\$25,261) for the 6-year period of our review rather than the marginal cost proposed by the BOP.<sup>130</sup> Although we believed that the marginal cost figure provided by the BOP did not represent the potential savings that would accrue from returning a foreign inmate to serve a sentence in the home country, we provided both figures so that readers could understand that the actual savings may vary. Specifically, on page 68, we state that “if we had used the marginal cost as the BOP proposed, the delay costs for the 1,425 inmates actually transferred during the 6-year period of our review would total \$5.4 million, which we believe is still substantial.”

**Finding:** To calculate the cost to the Department for delays in processing by the BOP and IPTU, we calculated the number of days to process each inmate’s application. From that total, we subtracted the number of days outlined in the BOP program statement (60 days) or IPTU expectation (90 days) from the total to obtain the number of days “over” the processing time. With that figure, we multiplied the daily average cost of incarcerating an inmate from FY 2005 through FY 2010 by the number of days over the expected timeliness standard in processing applications by inmates ultimately transferred in the program.

**BOP Response:** The BOP disagreed with how the OIG calculated timeliness in processing treaty transfer applications and explained that the process begins on the date the inmate signs the transfer request form. The BOP case manager then has 60 days to process the application, and after those 60 days, the application is mailed to the BOP’s Central Office. Once received by the Central Office, the BOP’s Correctional Programs Branch has 10 days to process the application. Therefore, the BOP stated that current policies provide for at least 70 days for processing all transfer applications, not including the time for mailing the application to the BOP’s Central Office. The BOP also stated that it should be noted that it takes, on average, 288 days for the foreign country to process transfer applications and that this processing time

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<sup>129</sup> Federal Register Annual Determination of Average Cost of Incarceration; A Notice by the Prisons Bureau, 73 Fed. Reg. 33853 (Jun. 13, 2008); 74 Fed. Reg. 33279 (Jul. 10, 2009); 76 Fed. Reg. 6161 (Feb. 03, 2011).

<sup>130</sup> See Appendix VI for more detail on our methodology.

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should be referenced when discussing BOP and OEO (Criminal Division) processing time frames. In addition, the BOP reiterated that the report should be amended to reflect the marginal costs and computations of potential cost savings should be done using marginal costs for the reasons stated earlier.

**OIG Analysis:** The processing time for a treaty transfer application was not miscalculated. The BOP's program statement states that "the initial Application Packet must contain the following documents and will be mailed to the Central Office . . . within 60 calendar days . . . ." There is no exception made in the program statement for the time it takes the application to get to the BOP's Central Office. In addition, the OIG did consider the 70 days listed in the program statement. All of our calculations were made using the standard of 60 days for the BOP and 10 days for Central Office, starting from the date the inmate signs the transfer request form. The report references 160 days for the Department's entire process to review transfer requests, which encompasses 70 days for the BOP and 90 for IPTU. This point is explained on page 58. Further, the OIG's cost calculation represents only the cost to the Department for delays in processing applications by the BOP and IPTU, and thus the cost is within the Department's control. We did not factor in the foreign country's processing time when calculating the cost to the Department because this is a factor that is outside of the Department's control, which is clearly explained on page 55. Finally, as stated above, we disagree with the BOP position that the report should be amended to reflect marginal costs.

**Finding:** We reviewed 65 of 116 handbooks used by BOP prisons. Of those 65 handbooks we found 28 (43 percent) did not have information regarding the treaty transfer program.

**BOP Response:** The BOP disagreed with our finding and stated that all inmates receive information about the transfer program through the Institution Admissions and Orientation (A&O) Program. Therefore, the absence of information about the transfer program in an A&O handbook cannot serve as a basis for concluding that inmates have not been informed about the program. The BOP requested that any references to the A&O handbook as a basis for concluding that inmates have not received information on the treaty transfer program be removed from the report. The BOP further explained that all BOP institutions are required to provide inmates with the Institution A&O Program within 4 weeks of arrival at their designated institution and that the treaty transfer program is a mandatory topic that is to be covered during the Institution A&O Program.

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**OIG Analysis:** We disagree with the BOP's statement that any reference to the handbooks should be removed. The BOP claims that the OIG used BOP handbooks to serve as a basis for concluding that inmates have not received information or have not been informed about the treaty transfer program. In fact, the OIG's conclusion is based on not only its review of the handbooks, but on interviews with inmates, a review of documents the BOP provides to inmates when they arrive at an institution, translation services used by prisons we visited, and foreign language training provided to BOP case managers. From those information sources, the OIG concluded on page 18 of the report that:

the BOP is generally informing inmates about the treaty transfer program, but the information is provided in various ways and in varying levels of detail, leaving some inmates not fully informed about the program. We believe that prison handbooks can serve as another means to fully explain the treaty transfer program to interested inmates.

For further clarification, the OIG footnoted that, "BOP prisons are not required to have handbooks. Individual prisons create their own handbooks, and the contents vary, including whether and what information is included about the transfer program." We continue to believe that our conclusion that inmates should be better informed about the program is correct based on all the evidence we reviewed.

**Finding:** Overall, from FY 2005 through FY 2010, foreign national inmates made 74,733 requests to be considered for transfer, and BOP case managers determined that 67,455, (90 percent) of those were ineligible.

**BOP Response:** The BOP disagreed with our finding and stated that it correctly assessed 60,716 (90 percent) inmates were ineligible during this time period. The BOP went on to state that to determine the accuracy of the remaining 10 percent, the BOP would have to conduct an individual assessment of each inmate's central file.

**OIG Analysis:** We disagree with the BOP's statement that it correctly assessed that 60,716 (90 percent) inmates were ineligible for the program. Although the BOP provided the OIG with information it obtained through a search limited to SENTRY in support of its eligibility determinations, the OIG was unable to verify the accuracy of this information without conducting an in-depth case file review. We believe that the BOP likewise could not have verified the accuracy of the information it provided. In our analysis, we found that from FY 2005

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through FY 2010, foreign national inmates made 74,733 requests to be considered for transfer, and BOP case managers determined that 67,455 (90 percent) of those were ineligible. Our analysis was based on SENTRY data provided by the BOP. However, as explained on page 24 in the report, the data provided by the BOP does not demonstrate that case managers determined eligibility correctly as we found that an inmate's eligibility cannot be determined solely through data contained in SENTRY. While we believe that the majority of the BOP's determinations may have been appropriate, a case file review for each inmate would be required to accurately verify whether ineligible determinations were appropriate. As explained in the report on pages 24 and 25, when we did such an in-depth review on a small sample of cases in which the inmates were determined to be ineligible, we found BOP staff may have made errors that resulted in incorrect determination in over one third of the cases. Although we agree that many determinations of ineligibility are correct, our analysis still shows that improving the BOP's procedures to provide for more accurate determinations will reduce erroneous rejections and increase inmate participation in the program.

**Finding:** We found that the treaty transfer program statement that BOP case managers rely on to assess inmates' transfer eligibility is incomplete and incorrect. Specifically, (1) the list of treaty nations contained in the program statement is incomplete; (2) the program statement indicates that inmates with appeals in progress are always ineligible, which is incorrect; (3) the program statement does not explain that there are exceptions to the rule that inmates must have at least 6 months remaining on their sentences to be eligible.

**BOP Response:** The BOP disagreed with the OIG's statements about the list of treaty nations and inmates with appeals. First, the BOP stated that its program statement had been updated as of August 4, 2011, and indicated that the complete list of treaty nations is located on the BOP's Intranet. Second, the BOP stated that its position on inmates with pending appeals being ineligible is correct based on treaty agreements with the foreign countries. The BOP further stated that the transfer agreements indicate the inmate's sentence must be final for the inmate to be eligible for transfer. Third, while the BOP stipulated that exceptions do exist to the rule that inmates must have at least 6 months remaining on their sentences to be eligible and the program statement does not reference this fact, the BOP stated that it is not cost effective to process applications for inmates with so little time remaining on their sentences given the long processing time for transferring countries to complete their portion of the review process. The BOP provided additional costs that it would incur to process these inmates and stated

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that incurring these costs does not guarantee all of these inmates will be transferred.

**OIG Analysis:** The OIG acknowledges in the report on page 33 that the BOP issued a revised program statement on August 4, 2011, and that the revised program statement states that the list of participating countries (treaty nations) will be maintained on the Correctional Programs Division's Intranet page (Sallyport). Further, the OIG's report states on page 33 that the revised program statement will replace the program statement reviewed during our field work, but we also state that the revised statement does not address all the weaknesses we found, including clarifying information on the eligibility of inmates with pending appeals. Additionally, on page 28 of the report, we acknowledge that *the Council of Europe Convention on the Transfer of Sentenced Persons*, *the Inter-American Convention on Serving Criminal Sentences Abroad*, and the Mexican bilateral treaty all state that an inmate's sentence must be final for the inmate to be eligible for transfer, but after discussions with IPTU, the OIG concluded that there are certain types of appeals that would not make an inmate ineligible for the program. The BOP's revised program statement provides clarification regarding appeals or collateral attacks, but we believe it still lacks needed information regarding what specific types of appeals make inmates ineligible for transfer. Finally, we agree that it may not be cost effective to process inmates with less than 6 months remaining on their sentences because of the length of time the Department and the transferring countries take to process applications. However, we believe that defining those types of exceptional circumstances in which requests by inmates from Council of Europe treaty nations with less than 6 months to serve may nonetheless merit consideration would facilitate prompt and economical action by the BOP and IPTU.

**Finding:** The potential cost savings from educating inmates and allowing more of them the opportunity to transfer to their home countries could be significant. As of FY 2010, there were 39,481 inmates from treaty nations in BOP custody who did not participate in the treaty transfer program. Not all of those inmates are appropriate transfer candidates and there are factors outside of the Department's control that could limit the potential cost savings, including the fact that the program is voluntary; treaty nations may not take back their citizens who are approved by the Department; and most importantly, the restrictions that prohibit the eligibility and suitability of Mexican inmates. However, if only 1 percent of the inmates (395) applied and were transferred to serve their sentences in their home countries, the BOP could potentially save \$10.1 million in annual incarceration costs. Similarly, if 3 percent of the

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inmates (1,184) or 5 percent (1,974) applied and were transferred to serve their sentences in their home countries, the BOP could potentially save \$30.4 million and \$50.6 million, respectively, in annual incarceration costs.

**BOP Response:** The BOP disagreed with the potential cost savings the OIG identified. The BOP stated that the OIG's potential savings are misleading and speculative because of the use of full costs. Therefore, the BOP stated that the report should be amended to reflect marginal costs associated with housing offenders, and computations of potential cost savings should be done using these marginal costs.

**OIG Analysis:** For reasons stated earlier, we disagree with the BOP's position that the report should be amended to reflect the marginal costs, and computations of potential cost savings should be done using marginal costs. If we had used the marginal cost as the BOP proposed, the delay costs for the 1,425 inmates actually transferred during the 6-year period of our review would total \$5.4 million instead of the \$15.4 million that we calculated using the total average cost of incarceration (\$25,261). However, we believe \$5.4 million is still substantial. In this report, we provide both figures so that readers can understand the range of potential savings.

**Finding:** During our fieldwork, we reviewed a limited sample of 52 of the 67,455 cases in which the BOP determined inmates were ineligible to apply for treaty transfer. We found potential errors in 19 of the 52 cases (37 percent) that indicate the cases could have been forwarded to IPTU, but were not.

**BOP Response:** The BOP stated that only 7 (not 19) of the 52 inmates were erroneously identified as ineligible, which translates to an error rate of 13 percent, not 37 percent. The BOP stated that 13 of the 52 inmates were appropriately identified as ineligible according to BOP policy because the inmates were serving sentences of 6 months or less. The BOP also stated that 22 of the 52 inmates were appropriately identified as ineligible according to the treaty agreement with Mexico because the inmates were Mexican nationals serving sentences for immigration violations. Additionally, the BOP stated that 9 of the 52 inmates' records had incorrect country codes indicating eligibility, while the inmates were actually from countries that do not have current treaty agreements with the United States (Jamaica, Cuba, Colombia, and the Dominican Republic). Finally, the BOP stated that one of the inmates had indicated no interest in the treaty program.



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**OIG Analysis:** We disagree with the BOP's calculation that only 7 of the 52 (13 percent) inmates were erroneously identified as ineligible. Our analysis is based on a sample of inmates who were determined ineligible by the BOP and the reasons for those determinations, according to information contained in the BOP's SENTRY database. However, after considering the BOP's response, we re-evaluated our analysis and determined that 9 of 52 (17 percent) of the BOP's determinations were incorrect. Our conclusions are based on the following determinations.

We found that based on the data the BOP provided to the OIG, six inmates who were not from Mexico were determined ineligible because they had immigration offenses that are disqualifying under the terms of the U.S.-Mexico bilateral treaty. The BOP acknowledged that in all these cases the case management staff mistakenly thought the immigration violation applied to all countries. The BOP's data and acknowledgement of the mistake is the basis of our finding the BOP's determinations regarding these six inmates was incorrect. In addition, BOP determined two inmates were ineligible for treaty transfer because they were from non-treaty nations, specifically the Dominican Republic and Colombia, when the inmates were actually from Denmark and Canada, which are treaty nations. We concluded that the BOP's determinations regarding these two inmates were also incorrect. Further, the BOP's data showed that one case was determined ineligible because of a "keying error," but later it was revealed that the inmate was eligible for transfer. This inmate was also included as an incorrect determination.

We also considered BOP's argument that 13 of the 52 inmates were appropriately identified as ineligible according to BOP policy because the inmates were serving sentences of 6 months or less. The data the BOP provided to the OIG indicated 13 inmates were determined to be ineligible for this reason. Twelve of the inmates were from Council of Europe Convention treaty nations and one was not. Although we recognize that it is currently the BOP's policy not to approve applications from inmates with less than 6 months to serve, as we explain on pages 25, 26, and 30 of the report that we believe the BOP's policy is anchored in a misunderstanding of the Council of Europe Convention, which states that inmates with less than 6 months to serve may be considered under exceptional circumstances, such as grave illness of a prisoner or pregnancy of the prisoner. The BOP's policy limits case managers from offering inmates with "exceptional circumstances" the opportunity to apply to for treaty transfer. The OIG does not believe that all inmates with 6 months or less remaining on their sentence should be considered, only those few inmates who can claim exceptional circumstances.

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However, because we could not determine that the inmates in our sample faced such exceptional circumstances, we did not conclude that the BOP's determinations were incorrect. In response to this report, OEO stated that it will work with the BOP to provide instruction in the BOP's program statement as to the types of situations that may qualify as exceptional circumstances.

Additionally, the BOP stated that 22 of the 52 inmates were appropriately identified as ineligible according to the treaty agreement with Mexico because the inmates were Mexican nationals serving sentences for immigration violations. We agree the data provided by the BOP states that 22 inmates were determined ineligible because they were serving sentences for immigration violations. We did not question the BOP's decisions related to these inmates because the OIG cannot assess the immigration status of the inmates without a case file review.

Further, the BOP stated that 9 of the 52 inmates' records contained incorrect country codes indicating eligibility. We disagree and concluded that, according to data provided by the BOP, seven cases contained input errors in SENTRY that wrongly listed the inmates' country of citizenship.

Finally, the BOP stated that one inmate indicated no interest in the treaty program. We agree that the BOP's data includes one case that states "keying error – no interest." (This is a different case than the keying error discussed above.) While there may have been an error in the BOP's database, such errors occur in both ways (others may be incorrectly coded as having not expressed interest when in fact they did). In any case, this inmate in this case was not included in our analysis that 17 percent of inmates were erroneously identified as ineligible, and it does not affect our conclusion that many of the BOP's determinations of ineligibility were incorrect.

In sum, our analysis that found 9 of 52 (17 percent) inmates were erroneously identified as ineligible.

**Finding:** We believe it is essential that the BOP have the capability to quickly develop, update, and implement program statements affecting its ability to fulfill its mission.

**BOP Response:** The BOP stated that its Master Agreement with the union provides the union the right to review and invoke negotiations of all national policies before they are finalized and implemented. Therefore, changes to BOP program statements require union review.

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**OIG Analysis:** In its draft report, the OIG acknowledged that if revisions to BOP program statements are necessary, updated program statements are provided to the union, which then has 30 days to invoke its right to negotiate the BOP's revisions to program statements.

**Finding:** Appendix III, Program Statement 5140.39 is attached.

**BOP Response:** The BOP stated that the most recent program statement is Program Statement 5140.40, dated August 4, 2011, and was implemented prior to the completion of the OIG's review.

**OIG Analysis:** In its draft report, the OIG acknowledged that the BOP issued a revised program statement on August 4, 2011. The OIG stated that the revised program statement will replace the program statement, last updated on December 4, 2009, that was reviewed during the OIG's field work. The program statement included in the report was current and in use during the period covered by the OIG review.















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## **APPENDIX XIV: OIG ANALYSIS OF THE CRIMINAL DIVISION RESPONSE**

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The Office of the Inspector General provided a draft of this report to the Criminal Division for its comments. The report contained 14 recommendations for consideration. Recommendations 7, 8, 13, and 14 are directed to the Criminal Division. Recommendations 3 and 6 are directed to both the Federal Bureau of Prisons (BOP) and the Criminal Division and require a response from both components. Recommendations 9 and 11 are directed to EOUSA and the Criminal Division and require a response from both components.

The Criminal Division's Office of Enforcement Operations' (OEO) provided general comments on the report, its response to the report's recommendations, and general comments on areas of the report where it had significant disagreement with findings. The Criminal Division's response is included in Appendix XIII of this report. The OIG's analyses of the Criminal Division's response, as well as the actions necessary to close recommendations, are discussed below.

### **GENERAL COMMENTS**

**OEO Comment:** OEO stated that it was concerned that the statistics the OIG cites regarding prisoner transfer approval rates paint an inaccurate picture of the prisoner transfer program. Specifically, OEO took issue with the OIG's language that "slightly less than one percent of the 40,651 foreign national inmates from treaty nations in federal prisons were transferred to their home countries." OEO stated that the OIG's statement conflates eligibility and suitability determinations and argues that the BOP's eligibility determinations and the Department's suitability determinations are two separate and distinct assessments.

**OIG Analysis:** We believe OEO's interpretation of this statistic is incorrect. The OIG recognizes that the two assessments (eligibility and suitability) are separate and distinguishes each throughout the report. Specifically, the BOP's eligibility determinations are discussed in Chapter I of the report and the Department's (OEO) suitability determinations are discussed in Chapter II of the report. The statistic cited by the OIG is the percentage of the total number of foreign national inmates from treaty nations in federal prisons who were transferred, based on data provided by the BOP and OEO's International Prisoner Transfer Unit (IPTU), and it is correct that less than 1 percent are transferred. Specifically, during FY 2010, 305 inmates were transferred

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to their home countries. These 305 transferred inmates represented less than 1 percent (0.8 percent) of the 40,651 foreign national offenders from treaty nations in BOP custody in FY 2010. We recognize that there are several reasons for the low transfer rate, including that many inmates are not eligible for transfer or are not interested in transferring. For example, Mexico, which accounts for most foreign national inmates in BOP custody, imposes significant restrictions that limit the number of its citizen inmates that it will accept for transfer. Whether inmates are not transferred because their requests are rejected (correctly or incorrectly) for eligibility or suitability reasons – or even because they do not ask to be transferred – the fact remains that very few foreign inmates from treaty nations are transferred to their home countries each year.

**OEO Comment:** OEO stated that, by its calculation, 59 percent of the applications forwarded to IPTU by the BOP were denied rather than the 70 percent stated in the draft report. OEO also stated that 41 percent of the applications were approved rather than the 30 percent stated in the draft report. OEO requested that the conclusions be revised and incorporated into the Executive Digest and body of the final report.

**OIG Analysis:** OEO statistics reflect the decisions made in response to only the last application from each inmate, while the OIG analysis reflects all decisions made by OEO during our review period, treating each determination as an individual decision. During the period the OIG reviewed, there were instances in which IPTU made decisions on more than one application from the same inmate (that is, an inmate applied, was denied, and then reapplied and was considered again at a later date). In these instances, each application was considered, evaluated, and decided on. A denial letter was issued and in some cases, the inmate waited 2 or more years to reapply to the program. We believe that our analysis of the IPTU data, which found that 70 percent of all applications considered by OEO were denied and 30 percent were approved, is the most accurate reflection of the outcome of OEO's decision process.

**OEO Comment:** OEO disagreed with the OIG's use of the total average incarceration cost per transferred inmate of \$25,627 in calculating incarceration costs that result from delays in processing requests from inmates ultimately transferred. However, OEO noted that in the body of the draft report the OIG also provided a calculation using the BOP's marginal cost, which resulted in \$5.4 million in delay costs. OEO requested that the OIG's calculation using the BOP's marginal costs also be incorporated into the Executive Digest of the report.

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**OIG Analysis:** We included both cost figures in the Executive Digest of the report.

## **OIG'S ANALYSIS OF OEO'S RESPONSE TO RECOMMENDATIONS**

**Recommendation 3. The BOP and IPTU coordinate to ensure that the BOP's program statement accurately reflects eligibility criteria based on treaty requirements and IPTU considerations, and that the BOP provide a revised program statement to its union for review.**

**Status.** Resolved – open.

**Summary of OEO Response.** OEO concurred with this recommendation and stated that it has begun an in-depth review to determine what modifications to its suitability guidelines are necessary to ensure that its transfer determinations are uniform and consistent. OEO stated that once this process is complete, OEO will meet with the BOP to discuss modifications to the BOP's program statement.

**OIG Analysis.** The actions planned by OEO are responsive to our recommendation. By February 29, 2012, please provide the results of OEO's review process, as well as: (1) lists of meetings held with the BOP, (2) copies of the meeting agendas, (3) a list of the attendees at each of the meetings, and (4) a description of proposed revisions to the BOP's program statement or a status of your progress.

**Recommendation 6. The BOP and IPTU coordinate with each other to update the BOP's program statement to accurately reflect the process by which inmates can obtain more information from IPTU regarding the reasons for denial.**

**Status.** Resolved – open.

**Summary of OEO Response.** OEO concurred with this recommendation to update the BOP's program statement to reflect a description of OEO decisional process; how transfer application decisions, including the reasons for denial, are communicated; the period of time that must elapse before inmates may reapply; the opportunity to request reconsideration of a transfer denial if there has been a material change in circumstances pertinent to the reason for denial and evidentiary support is provided to substantiate the change; and the ability to communicate with IPTU and other involved agencies concerning questions about the transfer program. OEO stated that it is not

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necessary to invite the prisoner to write to IPTU to explore the reasons his application was denied.

**OIG Analysis.** The actions planned by OEO are responsive to the intent of our recommendation. OEO's actions will provide BOP case managers and inmates more information on IPTU's process.

However, we disagree with OEO's response concerning prisoners not contacting OEO for more information on denial reasons. The prisoners we interviewed found the descriptions too sparse to inform them of exactly why they were denied the opportunity to transfer to their home countries. The OIG notes that, despite the objection OEO raised here, in response to Recommendation 7, OEO has made changes to its denial letters to state how inmates may obtain further information on denial reasons.

By February 29, 2012, please provide the OIG with OEO's proposed changes to the BOP's program statement as well as: (1) lists of meetings held with the BOP, (2) copies of the meeting agendas, (3) a list of the attendees at each of the meetings, and (4) a description of proposed revisions to the BOP's program statement or a status of your progress.

**Recommendation 7. IPTU fully implement its plan to include in denial letters a description of how inmates can obtain further information regarding the reasons for denials, as well as information on what the inmate can do to become a better candidate for transfer, if applicable.**

**Status.** Resolved – closed.

**Summary of OEO Response.** OEO concurred with this recommendation and stated that IPTU made two changes to the language of its denial letters. First, IPTU deleted from denial letters the sentence that states, “[t]he application is more likely to be approved in the future if the prisoner has maintained the best possible prison record and has attempted to address those reasons for denial over which the prisoner has some control.” Second, IPTU added language to its denial letters that states,

if the prisoner believes that the circumstances relating to the denial of the transfer application have changed significantly, the prisoner may write to the Department of Justice to seek a reconsideration of the transfer decision earlier than two

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years from the date of this letter. Unless the prisoner is able to show that the reasons supporting the denial of his transfer application have changed substantially, it is unlikely that the United States will change its decision.

OEO provided an example of a revised denial letter that reflected these changes.

**OIG Analysis:** Based on the actions taken by OEO to include in denial letters a description of how inmates can obtain further information regarding the reasons for denials and potentially be reconsidered, this recommendation is closed.

**Recommendation 8. IPTU fully implement its plan for a reconsideration process that requires IPTU analysts to follow up on the reasons an inmate's request was denied so that inmates whose circumstances change before the 2-year waiting period may reapply.**

**Status.** Resolved – closed.

**Summary of OEO Response.** OEO concurred with this recommendation and implemented a computerized notification system to ensure that timely follow-up occurs. It also developed a spreadsheet to track and monitor cases. OEO provided the OIG with copies of both.

**OIG Analysis.** Based on the actions taken by OEO to develop a reconsideration process that requires IPTU analysts to follow up on the reasons an inmate's request was denied so that inmates whose circumstances change before the 2-year waiting period may reapply, this recommendation is closed.

**Recommendation 9. The EOUSA work with IPTU to update information available to USAOs about the prisoner treaty transfer program through the EOUSA Intranet, updates to the USAM, or other appropriate means.**

**Status.** Resolved – open.

**Summary of OEO Response.** OEO concurred with this recommendation and stated that it had completed a revision of the USAM provisions, which is in EOUSA's review and approval process, and updated the 2002 informational memorandum from the former Criminal Division's Assistant Attorney General. OEO also provided copies of revised USAM provisions to the OIG.

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**OIG Analysis.** OEO's actions are responsive to our recommendation. Please provide the OIG with a copy of the final approved revised USAM provisions, an updated and signed informational memorandum from the Criminal Division's Assistant Attorney General, and verification that this memorandum was provided to EOUSA by February 29, 2012.

**Recommendation 11. The EOUSA will work with IPTU to develop a strategy for communicating to the Federal Public Defender and the courts information about the availability of the program.**

**Status.** Resolved – open.

**Summary of OEO Response.** OEO concurred with this recommendation and has drafted letters to the Federal Public Defenders Service and to the United States Probation Offices that provide information about the treaty transfer program and encourage them to alert eligible foreign national prisoners to the program. OEO also said that it will work with EOUSA to determine how best to make the letters available to the recipients.

**OIG Analysis.** OEO's actions are responsive to our recommendation. Please provide the OIG with copies of the final letters for the Federal Public Defenders Service and the United States Probation Offices, as well as a description of IPTU's role in making the letters available to the recipients, by February 29, 2012, or a status report of your progress.

**Recommendation 13. IPTU fully implement formal timeliness requirements for evaluating treaty transfer requests and institute a system to track IPTU analysts' evaluation of application packets.**

**Status.** Resolved – closed.

**Summary of OEO Response.** OEO concurred with this recommendation and provided documentation of the establishment of formal timeliness standards and of the implementation of a system to track IPTU analysts' evaluation of application packets.

**OIG Analysis.** OEO provided the OIG with documentation establishing formal timeliness standards. In addition, OEO provided the OIG with a screen shot of its system to track IPTU analysts' evaluation of application packets pending in IPTU for 90 days or longer, beginning August 1, 2011. The screen shot included a list of IPTU analysts, the

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case and name, the number of days pending, and a history of the case, including reasons for a delay. The screen shot indicated that only two cases were pending in IPTU for over 90 days. The reason for delay in each of these two cases was also described in the case history, as well as steps the IPTU analyst had taken to resolve the delay. Based on the actions taken by OEO to implement formal timeliness requirements for evaluating treaty transfer requests and instituting a system to track IPTU analysts' evaluation of application packets, this recommendation is closed.

**Recommendation 14. IPTU update its information request forms to USAOs and law enforcement agencies to request a response within 21 days and state that failure to respond will result in IPTU proceeding with its evaluation under the assumption the agency has no objection to transfer.**

**Status.** Resolved – closed.

**Summary of OEO Response.** OEO concurred with this recommendation and provided copies of revised information requests to USAOs and many law enforcement agencies, including the Bureau of Alcohol, Tobacco and Explosives; the Drug Enforcement Administration; and the Federal Bureau of Investigation. The revised information requests state, “FAILURE TO RESPOND WITHIN 3 (THREE) WEEKS WILL BE TREATED AS EITHER TAKING NO POSITION OR HAVING NO OBJECTION TO THE TRANSFER.”

**OIG Analysis.** Based on the actions taken by OEO to update its information request forms to USAOs and law enforcement agencies to request a response within 21 days and state that failure to respond will result in IPTU proceeding with its evaluation under the assumption the agency has no objection to transfer, this recommendation is closed.

## **OEO’S COMMENTS ON REPORT FINDINGS**

In addition to addressing the recommendations, OEO provided information regarding findings in which significant disagreement remains within the report. In this section, we summarize OEO’s comments and provide our analysis.

**Finding:** The need to provide greater scrutiny of transfer applicants having less than 6 months remaining on their sentences



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**OEO Response:** OEO disagreed with the OIG’s statement that “inmates from Council of Europe treaty nations with less than 6 months to serve would benefit from the opportunity for a more in-depth evaluation of their application by IPTU to determine their suitability for transfer” and stated that processing these transfer applicants is not advisable. OEO stated that all transfer treaties require that an inmate have a certain period of time, typically 6 months, remaining to be served at the time the transfer request is made. OEO also stated that the “requirement exists to allow a sufficient period of time remaining on the sentence to enable the prisoner to transfer to his native country and to become re-acclimated with its culture, thus furthering one of the program’s major goals: rehabilitation.” In addition, OEO stated that there would be insufficient time remaining on the inmate’s sentence for both the sentencing and administering countries to complete the transfer process. OEO stated that, in all likelihood, prisoners with less than 6 months to serve would be released before the home countries would be able to escort them home.

**OIG Analysis:** We agree that transfer treaties typically require that inmates have 6 months remaining to be served at the time the transfer request is made, and we acknowledge that one of the program’s major goals is rehabilitation. However, inmates with 6 months or less remaining on their sentence who are from Council of Europe Convention treaty nations may be considered for transfer in limited circumstances because the Council of Europe Convention specifically states that, “in exceptional cases, Parties may agree to a transfer even if the time to be served by the sentenced person is less than” 6 months. OEO’s agreement to work with the BOP and define the types of situations that may qualify as exceptional circumstances will address the OIG’s concern and ensure the BOP and IPTU have the direction they need to fully implement the treaty transfer program.

**Finding:** The consistency of IPTU in determining the suitability of a prisoner for transfer

**OEO Response:** OEO stated that IPTU has instituted changes to improve the consistency of the review process in determining the suitability of inmates for transfer, including re-reviewing the suitability criteria with all IPTU attorneys and analysts, regular meetings with IPTU staff to review the criteria and clarify their application, adding an additional level of review in cases dealing with proposed denials. Specifically, when the Deputy Director recommends denial of a prisoner transfer application, the Director of OEO conducts a further review of that case.

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**OIG Analysis:** OEO did not specify an area of significant disagreement. Rather, OEO described changes to improve the consistency of its review process in determining the suitability of inmates for transfer. The OIG is encouraged by OEO's efforts to improve the consistency of determining the suitability of a prisoner for transfer in response to the findings of this report.

**Finding:** The appropriate informational content of letters informing prisoners that their transfer applications have been denied

**OEO Response:** OEO disputed the OIG's statement that the "IPTU does not provide enough information in denial letters, resulting in inmates not fully understanding the reasons for denial or what they can do to address those reasons." OEO also disagreed there was a need to provide inmates with more detailed explanations of its reasons for denying transfers or to inform inmates in the denial letter that they can write to IPTU for additional explanations. OEO stated that its "current letters adequately and efficiently communicate the reasons for denial" and that many of the reasons for denials are self-explanatory. OEO further stated that the reasons for denial underlying a "serious law enforcement concerns" designation cannot be revealed to a prisoner for a number of reasons. OEO also stated that it has made two changes to its denial letters. First, OEO has deleted the language advising prisoners that their applications are more likely to be approved if they address those reasons for denial over which they have some control. Second, OEO has added language to denial letters informing prisoners that they can seek reconsideration if they are able to provide support that the reasons underlying the denial have changed substantially.

**OIG Analysis:** The changes OEO has made to its denial letters have addressed the OIG's concerns.

**Finding:** The savings that could be realized by increasing the number of approved transfer candidates

**OEO Response.** OEO agreed that "increasing the number of prisoner transfers would result in some cost savings." However, OEO stated that any savings to be realized from increasing the number of prisoners approved by IPTU would still be contingent on the foreign country's decision to accept the inmates for transfer. OEO further stated that a number of prisoners are approved for transfer by IPTU that have not been transferred because either the receiving country does not accept them or because of delays in processing by the receiving country.

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**OIG Analysis.** The OIG agrees with OEO's response and described in the report factors outside of the Department's control that limit the number of inmates transferred.







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## **APPENDIX XVI: OIG ANALYSIS OF THE EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS RESPONSE**

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The Office of the Inspector General provided a draft of this report to the Executive Office for United States Attorneys (EOUSA) for its comments. The report contained 14 recommendations for consideration. Recommendation 10 is directed to EOUSA. Recommendations 9 and 11 are directed to EOUSA and the Criminal Division and require a response from both components.

EOUSA provided a general comment as well as responses to our recommendations. EOUSA's response to the recommendations is included in Appendix XV of this report. The OIG's analysis of the EOUSA's general comment and responses, as well as the actions necessary to close the recommendations, are discussed below.

### **GENERAL COMMENT**

**Summary of the EOUSA Response.** EOUSA stated that it is uncertain whether the plea negotiation process is the best means by which to educate the defendant and court about the benefits of the prisoner transfer process. According to EOUSA, the defendant's counsel is in a better position to inform and advise a defendant about the treaty transfer program. EOUSA stated it can play a role in achieving the desired result through implementation of Recommendation 11, described below, to develop a communication strategy to educate the court and defense counsel about the program.

**OIG Analysis.** While the OIG believes that that the plea negotiation process is a potential means of educating criminal defendants about the treaty transfer program, we agree with EOUSA that the defendant's counsel may be in a better position to inform and advise a defendant about the treaty transfer program, provided that the defendant's counsel is knowledgeable about the program. EOUSA's concurrence and planned action in response to Recommendation 11 will help to ensure that the defendants' counsels are knowledgeable about the program.

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**Recommendation 9. Work with IPTU to update information available to USAOs about the prisoner treaty transfer program through the EOUSA Intranet, updates to the USAM, or other appropriate means.**

**Status.** Resolved – open.

**Summary of EOUSA Response.** EOUSA concurred with this recommendation and stated that it had reviewed documents received from IPTU proposing changes to the *U.S. Attorney's Manual*. EOUSA stated that relevant prisoner treaty transfer information will be communicated to USAOs through the USAM, EOUSA's Intranet, or some other means within 120 days. EOUSA stated that the Attorney General's Advisory Committee would be able to review the issue of revising the USAM at its December 2011 meeting, which would allow EOUSA to complete its response within 120 days.

**OIG Analysis.** The actions planned by EOUSA are responsive to our recommendation. By February 29, 2012, please provide the OIG with copies of the approved changes made to the USAM and any information that is provided to USAOs referencing the prisoner treaty transfer program, whether on EOUSA's Intranet or by other means.

**Recommendation 10. Provide USAOs with sample plea agreement language which explains that the USAO can agree to recommend or not oppose a transfer request while also making clear that the determination rests with IPTU and the USAO concession in the plea agreement does not bind IPTU.**

**Status.** Resolved – open.

**Summary of EOUSA response.** EOUSA concurred with this recommendation and stated that it is in the process of reviewing sample plea agreement language proposed by IPTU. EOUSA anticipates communicating sample plea agreement language to the USAOs within 120 days.

**OIG Analysis.** The actions planned by EOUSA are responsive to our recommendation. By February 29, 2012, please provide the OIG with a copy of the plea agreement language that will be provided to USAOs.



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**Recommendation 11. Work with IPTU to develop a strategy for communication to the Federal Public Defender and the courts information about the availability of the program.**

**Status.** Resolved – open.

**Summary of EOUSA response.** EOUSA concurred with this recommendation and stated that it is currently discussing a communication strategy with IPTU. EOUSA stated that it anticipated executing a communication strategy within 120 days.

**OIG Analysis.** The actions planned by EOUSA are responsive to our recommendation. By February 29, 2012, please provide the OIG with a copy of the communications strategy that EOUSA plans to implement.