



Office of the Inspector General
U.S. Department of Justice



Status Review on the Department's International Prisoner Transfer Program

EXECUTIVE SUMMARY

Introduction

This is the second Office of the Inspector General (OIG) report on the International Prisoner Transfer Program (treaty transfer program), which Congress created to allow selected foreign national inmates in federal prisons to complete their prison terms in their home countries' prisons.¹ The OIG's first report found that of the over 40,000 inmates from treaty transfer nations in Federal Bureau of Prisons (BOP) custody in fiscal year (FY) 2010, less than 1 percent of these inmates were ultimately transferred back to their home countries. This report finds that while some progress has been made in addressing the issues identified in our initial report in 2011 and there are some factors largely outside the control of the Department of Justice (DOJ or Department), more can be done by the Department to improve the effectiveness of the treaty transfer program. We believe that Department leadership needs to address this challenge to ensure that the Department is more fully utilizing this important program.

The OIG's 2011 report found that the Department's treaty transfer program was ineffective in several significant respects and that by increasing the number of inmates transferred the Department could reduce its incarceration costs and relieve overcrowding in federal prisons. For foreign inmates who are subject to deportation following the completion of their federal prison sentence, transfer avoids the cost to the Department of Homeland Security of undertaking a deportation proceeding and of housing the foreign nationals during those proceedings.² For those foreign inmates who may not be deportable, transfer ensures that the inmates do not remain in this country at the conclusion of their prison sentence. We made 14 recommendations for the Department to more effectively manage the program, 13 of which have been closed and 1 of which is still being implemented. This status report describes actions the Department has taken to improve the management of the program and further evaluates factors that may continue to limit the number of foreign national inmates transferred.

The Department administers the treaty transfer program principally through the Criminal Division's Office of Enforcement Operations' (OEO) International Prisoner Transfer Unit (IPTU) and the BOP. The BOP is responsible for explaining the program to foreign national inmates, determining if a current treaty agreement exists for the home countries of interested inmates, and preparing application packets for interested inmates whom BOP staff determines to be eligible to apply for transfer. In our 2011 review, we found, for example, that the BOP did not

¹ DOJ, OIG, *The Department of Justice's International Prisoner Transfer Program*, Evaluation and Inspections Report I-2012-02 (December 2011), <http://www.justice.gov/oig/reports/2011/e1202.pdf>.

² As opposed to traditional deportation, costs associated with the transfer of inmates through the treaty transfer program are born by the treaty nation.

communicate effectively with inmates about the program and sometimes incorrectly declared inmates ineligible.

Once the BOP forwards an eligible inmate's application packet, the IPTU is responsible for reviewing the packet and approving or denying the transfer request based on law enforcement concerns about the inmate, the likelihood of the inmate's social rehabilitation, and the possibility that the inmate would return to the United States. In our 2011 review, we found that the IPTU did not consistently evaluate inmate suitability, resulting in some inmates being denied for transfer even though other inmates in similar situations had been approved. We also found that the IPTU did not provide sufficient information to inmates concerning the reasons for a denial of transfer so that they could address any issues for future application.

Results in Brief

The Number of Foreign National Inmates in Federal Prisons Continues To Increase Substantially

Since the OIG's 2011 review, the number of foreign national inmates from treaty nations in BOP custody continues to grow substantially, increasing 31 percent, from 32,912 in FY 2005, the first year examined in our previous review, to 42,954 in FY 2013, the last year examined in this current status review.

The Number of Inmates Applying for Transfer Also Has Increased Substantially

Based on our current review of Department data and interviews with Criminal Division and BOP staff, it appears that changes the Department has made to the management of the treaty transfer program since our last review have contributed to an increase in the number of inmates requesting and being found suitable for transfer. We found that between FY 2010, the last year examined in our previous review, and FY 2013, the last year in this status review, inmate requests to the BOP for transfer rose by 72 percent, from 14,020 to 24,122. We further found that the BOP took a number of important steps that likely contributed to this result, including improving its ability to effectively communicate with foreign national inmates by translating all documents related to the treaty transfer program into all languages associated with treaty nations. The BOP also revised its program statement to direct case managers to discuss the transfer program at an inmate's initial classification and at every subsequent program review.

The Number of Inmates Approved for Transfer Has Increased Modestly

Despite the important steps the BOP has taken and the substantial increase in the number of inmate transfer requests, the number of inmates the BOP has deemed eligible and that the IPTU has approved for transfer has increased only modestly and the percentage increase was far less than the increase in the number of inmates requesting transfer. For example, the number of applications from inmates determined eligible for transfer that BOP forwarded to the IPTU grew from 1,170 in FY 2010 to 1,422 in FY 2013, an increase of 22 percent. Similarly, the

number of inmates approved for transfer by IPTU grew from, on average, 368 applications from FY 2005 through FY 2010 to, on average, 450 per year from FY 2011 through FY 2013, also an increase of 22 percent. We found that the IPTU took steps to improve the consistency of its suitability determinations, including regular meetings between IPTU management and staff to review the suitability criteria and clarify their application. Nevertheless, the number of inmates approved for transfer still represents only a tiny fraction of the estimated 24,122 inmates from treaty transfer nations who requested transfer in FY 2013.³

The Number of Inmates Ultimately Transferred Has Decreased

Moreover, the average number of inmates the Department transferred to serve the remainder of their sentences in their home countries actually decreased since our report in 2011: An average of 238 foreign national inmates were transferred from FY 2005 through FY 2010, while an average of only 227 inmates were transferred between FY 2011 and FY 2013.

As a result, we remain concerned that the Department is not fully utilizing the transfer authority Congress gave it to return eligible and suitable foreign national inmates to their home countries. We did not undertake as part of this status review an evaluation to determine why, in FY 2013, for example, the 24,122 requests for transfer resulted in only 494 inmates being approved for transfer.⁴ However, if the Department wants to ensure it uses this program to the fullest extent possible, we believe it should undertake such a review of BOP eligibility and IPTU suitability determinations. We also remain concerned about the timeliness of the Department's review process. The IPTU reported to us that a backlog of about 400 applications were pending a transfer decision, which can affect a potentially suitable inmate's ability to remain eligible for transfer to complete his or her sentence in the home country.⁵ The Department must consider the IPTU's appropriate staffing needs to process applications and ensure both the BOP and the IPTU have guidelines to target the best possible candidates for transfer. We intend to follow up further as we continue our work in this area.

Also, while the BOP and the Criminal Division worked together to revise the BOP's program statement to accurately and completely establish transfer eligibility requirements after our 2011 report, the jointly revised program statement was not issued until April 2015.

³ In addition to being a citizen of a treaty nation, an inmate must also have at least 6 months remaining on his or her sentence and must not be incarcerated for certain types of crimes. We discuss the basic treaty requirements further in Appendix 1.

⁴ Our analysis of the 24,122 requests in FY 2013 includes those inmates whom the BOP determined eligible and forwarded to the IPTU (1,422), as well as those inmates who requested transfer but the BOP determined ineligible (22,700).

⁵ In response to a working draft of this report, the Criminal Division stated that as of June 18, 2015, there were 55 cases pending a transfer decision by IPTU. We discuss IPTU's backlog below.

We recognize that several factors outside the Department's direct management of the program contribute to keeping the number of inmates ultimately transferred low, including: (1) the program is voluntary and inmates who could be suitable for transfer may prefer to serve their sentences in U.S. prisons; (2) many foreign national inmates in BOP custody are not from treaty nations and thus cannot be transferred; (3) restrictions in treaties, most notably with Mexico, limit the offenses for which an approved transfer can be effected; and (4) the failure of treaty nations to approve their nationals for transfer and the slow decisional process existing in many countries.

Foreign inmates from treaty nations who are eligible and suitable but not transferred contribute to the overcrowding of the federal prison system and particularly of federal contract prisons where, in FY 2013, foreign national inmates from treaty nations constituted 82 percent of the total BOP contract prison inmate population. Foreign national inmates also add to the Department's prison costs: In fact, our review of BOP and IPTU data found that, from FY 2011 through FY 2013, the Department had incurred costs of \$26 million to continue incarcerating 959 inmates whose transfer requests already had been approved by the Department but remained in BOP custody because the request was still pending a decision by the home treaty nation, denied by the home treaty nation, or withdrawn by the Department because the home treaty nation did not make a decision with enough time left on the inmate's sentence to permit transfer. Because these costs do not include the many thousands of inmates who will not or cannot apply and be approved for transfer, they represent just a fraction of the total cost to the American taxpayer of incarcerating foreign nationals.

Conclusions and Recommendations

The OIG believes the Department can take a number of discrete steps to improve the effectiveness of the treaty transfer program by reviewing data to determine why so many inmate applications result in only a handful of transfers, as well as by ensuring that the IPTU has the necessary resources to ensure the timely processing of applications and reviewing IPTU guidelines to target the most suitable and eligible inmates for transfer. Finally, senior Department leadership should convene and support a high-level working group with treaty transfer partners to assess factors that limit the number of inmates ultimately transferred from BOP custody. For example, by working with treaty partners, such as the Department of State and treaty nation officials, the Department should develop an interagency strategy to increase the number of foreign national inmates transferred to serve the remainder of the sentences in their home countries' prisons. We therefore make five recommendations in this report to further improve the management and effectiveness of the treaty transfer program.

TABLE OF CONTENTS

INTRODUCTION	1
Primary Department Components and Other Organizations Involved in Treaty Transfer	2
Foreign National Inmates in BOP Custody	3
Foreign National Inmates' Interest in and Eligibility for Treaty Transfer.....	4
The OIG's 2011 Report on the Treaty Transfer Program	5
Scope and Methodology of the OIG Review	7
RESULTS OF THE REVIEW	8
Numbers of Transfer Requests and Actual Transfers	8
Changes to the Treaty Transfer Program.....	12
Factors That Continue To Limit the Program's Effectiveness.....	24
CONCLUSION AND RECOMMENDATIONS.....	36
Conclusion	36
Recommendations.....	37
APPENDIX 1: INTERNATIONAL TREATIES AND TRANSFER REQUIREMENTS GOVERNING TREATY TRANSFER.....	38
APPENDIX 2: THE DEPARTMENT'S RESPONSE TO RECOMMENDATIONS THE OIG MADE IN ITS 2011 REPORT	43
APPENDIX 3: METHODOLOGY OF THE OIG STATUS REVIEW.....	51
APPENDIX 4: THE DEPARTMENT'S RESPONSE TO THE DRAFT REPORT	54
APPENDIX 5: OIG ANALYSIS OF THE DEPARTMENT'S RESPONSE	58
The Department's General Comments	58
The Departments's Responses to Recommendations.....	63

INTRODUCTION

The International Prisoner Transfer Program (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 transfer agreements with 79 countries negotiated principally by the U.S. Department of State. The benefits of the treaty transfer program include greater rehabilitative potential for inmates by allowing them to be closer to their families in their country of citizenship, which aids in their reintegration into society upon release; cost savings for institutions, such as the Federal Bureau of Prisons (BOP), that would otherwise house foreign nationals; and reductions in federal prison populations, freeing up bed space in already overcrowded BOP institutions. Additionally, for foreign inmates who are subject to deportation following the completion of their federal prison sentence, transfer not only results in cost savings for the BOP but also avoids the cost to the Department of Homeland Security of having to undertake deportation proceedings and house the foreign nationals during those proceedings. And for any foreign inmates who may not be deportable, transfer results in the inmates being in their home country, rather than the United States, upon completion of their prison sentence.

This status review examined the progress the Department of Justice (DOJ or Department) has made in managing the treaty transfer program since its Office of the Inspector General's (OIG) 2011 report finding that few foreign national inmates from treaty transfer nations were transferred to their home countries each year to complete their sentences.⁶ In the current review, we analyzed recent program data and assessed how the Department informs inmates about the program, determines transfer eligibility, and evaluates suitability for transfer. We further assessed how limitations on the number of inmates who are ultimately transferred affects the costs and overcrowding of the federal prison system.

In this introduction, we first discuss the primary Department components, other organizations, and foreign national inmates involved with the treaty transfer program. We then discuss the number of foreign national inmates in BOP custody and foreign national inmates' interest in and eligibility for treaty transfer. Finally, we discuss findings related to the OIG's 2011 report examining whether the Department is effectively managing its treaty transfer program.

⁶ DOJ, OIG, *International Prisoner Transfer Program*.

Primary Department Components and Other Organizations Involved in Treaty Transfer

The Department's treaty transfer program is administered primarily by the BOP and the Criminal Division.⁷ In addition, foreign governments and their embassies and consulates within the United States have a role in the process. The following paragraphs briefly describe each organization's role.

The Federal Bureau of Prisons

BOP case managers are responsible for explaining the treaty transfer program to inmates and determining whether inmates interested in the program are eligible to apply. Eligibility is based on treaty and statutory requirements, such as whether the inmate is from a treaty nation, whether the inmate has any pending appeals or collateral attacks on the underlying judgment or sentence, and whether the time remaining on the inmate's sentence satisfies the period specified by the treaty for the inmate to be eligible to apply for transfer. When BOP case managers determine an interested inmate is eligible, they assemble and send the application packet to the BOP's Central Office. The BOP's Central Office then reviews the packet and forwards it to the Criminal Division. If the Criminal Division and treaty nation approve an inmate for transfer, the BOP helps coordinate the transfer and transports the inmate to a departure institution for return to his or her country of citizenship.

The Criminal Division

The Criminal Division's Office of Enforcement Operations' (OEO) International Prisoner Transfer Unit (IPTU) receives the application packet from the BOP and determines the suitability of an inmate for transfer based on factors such as views of the prosecutor, law enforcement concerns about the inmate, the likelihood of the inmate's social rehabilitation, and the possibility that the inmate would return to the United States.⁸ The IPTU also responds to inquiries from inmates or inmates' representatives, such as their attorneys or family members, and communicates with, meets, and trains officials from countries having prisoner transfer treaties with the United States. After both the OEO and the receiving country approve a transfer, the IPTU coordinates a consent verification hearing at which a U.S. Magistrate Judge determines whether an inmate understands the ramifications

⁷ Two other components have limited roles in the treaty transfer program: the U.S. Attorneys' Offices (USAO) and the U.S. Marshals Service. In this status report, we discuss conclusions and findings from our 2011 report related to the USAOs, as well as corrective actions the Executive Office for U.S. Attorneys (EOUSA) has taken. However, we do not reexamine the USAOs' role in the program. We also do not reexamine the role of the U.S. Marshals Service, which manages the transport of foreign national inmates within the United States.

⁸ The law enforcement agencies the IPTU consults include the Department of Homeland Security's Immigration and Customs Enforcement; the Drug Enforcement Administration; the Federal Bureau of Investigation; the Bureau of Alcohol, Tobacco, Firearms and Explosives; and the U.S. Postal Service.

of the transfer and confirms that the inmate consents to transfer.⁹ The IPTU then helps coordinate the transfer of the inmates to foreign authorities.

Foreign Countries and Their Embassies and Consulates within the United States

Foreign governments and their embassies and consulates throughout the United States also assist inmates with the transfer program.¹⁰ The IPTU notifies the foreign government's central authorities for prisoner transfer when it determines that a transfer is or is not appropriate. If the IPTU determines that a transfer is appropriate, the foreign government then decides whether to approve or deny transfer. The foreign authorities may also arrange for their consular officials to interview an inmate who has applied for the program. Additionally, foreign authorities provide escorts to accompany an approved inmate from the BOP departure institution to the inmate's home country.

For information related to international treaties and transfer requirements governing treaty transfer, as well as national and Department policies governing treaty transfer, see Appendix 1.

Foreign National Inmates in BOP Custody

From fiscal year (FY) 2011 through FY 2013, the BOP's sentenced inmate population ranged from 203,592 to 205,184.¹¹ During that time, foreign nationals represented 25 percent of the total sentenced inmate population, while foreign nationals from treaty nations represented, on average, 21 percent of the BOP's total sentenced inmate population (see Table 1).

⁹ The OEO reported to us that it plans to test a process that will permit an inmate represented by counsel to waive his or her consent verification hearing. According to the OEO, although this process will not increase the number of inmates approved for transfer, it will save government resources usually spent on the consent verification hearings.

¹⁰ The assistance provided by foreign authorities represents their obligations related to their citizens, and not their actions related to carrying out the treaty transfer program related to United States citizens overseas who are eligible for transfer.

¹¹ Our analysis excludes pre-trial inmates because only sentenced inmates are eligible to apply for treaty transfer. In FY 2013, the BOP held approximately 14,000 pre-trial inmates in addition to 205,184 sentenced inmates.

Table 1
Citizenship of BOP Sentenced Inmate Population
FY 2011 through FY 2013

Fiscal Year	Total Inmates in BOP Custody	U.S. Citizen Inmates	Foreign National Inmates from Treaty Nations	Foreign National Inmates from Non-Treaty Nations	Inmates of Unknown Citizenship*
2011	203,592	150,747	43,703	9,028	114
2012	203,396	151,577	43,286	8,451	82
2013	205,184	154,048	42,954	8,124	58

Note: Inmates with unknown citizenship are those whose proof of citizenship is not available to BOP staff at the time the inmate is assigned to BOP custody.

Source: BOP.

Also, the number of foreign national inmates from treaty nations in BOP custody has increased 31 percent, from 32,912 in FY 2005, the first year examined in our 2011 review, to 42,954 in FY 2013, the last year of this status review. Over this same period, the population of foreign national inmates from treaty nations increased from 19 percent of the BOP's total population to 21 percent.

Foreign National Inmates' Interest in and Eligibility for Treaty Transfer

The treaty transfer program is voluntary, and an inmate must request transfer. Requirements established in treaty agreements between the United States and treaty nations require that the inmate must also consent to transfer. In a 2013 report to Congress, the Department stated that of the inmates eligible to apply for transfer, most decide not to request transfer.¹² The Department reported that many inmates had resided in the United States for a significant period of time and chose not to request transfer because of the presence of family and friends and employment opportunities here. Also according to the Department's report, other inmates believe the prison conditions in their home countries are harsher; the administration of their sentence in their home countries would result in more time in prison; or that the transfer would result in a prison record in their home countries, which may result in restrictions within their home countries.

Not all inmates are covered by transfer agreements. While the United States has transfer agreements with 79 countries, the BOP housed inmates from as many as 100 countries in FY 2013, leaving 8,124 foreign national inmates from countries that do not have a transfer treaty with the United States.¹³ As noted in the OIG's 2011 report, the United States did not have a transfer agreement with Colombia, Cuba, or the Dominican Republic, which in FY 2013 collectively represented 5,241

¹² DOJ, Attorney General, *The Effectiveness of the International Prisoner Transfer Treaties to Which the United States Was a Party in FY 2012*, Report to the Committees on the Judiciary of the U.S. Senate and House of Representatives (June 2013).

¹³ In 2014, India and Argentina acceded to the OAS multilateral convention and became new transfer treaty partners of the United States.

inmates of the BOP's foreign national inmate population from countries without treaty agreements with the United States. The decision of whether to negotiate new bilateral prisoner transfer treaties rests within the authority of the Department of State. According to the Department of State, at this time, it is the policy of the United States not to negotiate any new bilateral prisoner transfer treaties, mostly due to the arduous nature of getting a treaty in force. The United States encourages countries to consider acceding to one of two multilateral conventions on this subject to which the United States is a party: the Organization of American States' Inter-American Convention on Serving Criminal Sentences Abroad (OAS), and the Council of Europe Convention on the Transfer of Sentenced Persons (COE).

Foreign national inmates who are covered by transfer agreements must satisfy a number of treaty requirements to be eligible for transfer. As detailed in our 2011 report, restrictive criteria imposed by treaty agreements significantly limit the number of foreign national inmates eligible for the Department's consideration. For example, the treaty with Mexico prohibits the transfer of inmates incarcerated for immigration offenses.¹⁴ Mexican inmates consistently represent the majority of foreign national inmates in BOP custody, and half of them are incarcerated for immigration offenses.¹⁵ Consequently, more than 18,000 Mexican nationals in BOP custody are ineligible for transfer consideration because they are in custody for immigration offenses.

The voluntary nature of the transfer program, the lack of treaty agreements with all foreign countries represented by the foreign national inmate population in BOP custody, and restrictive criteria imposed by treaty nations significantly limit the number of foreign national inmates eligible for transfer consideration. Later in this report, we discuss other factors outside the Department's management of the program that limit the number of foreign national inmates ultimately not transferred.

The OIG's 2011 Report on the Treaty Transfer Program

The OIG's 2011 report found that each year few foreign national inmates from treaty transfer nations were transferred to their home countries to complete their sentences. For example, in FY 2010, slightly less than 1 percent of the 40,651 foreign national inmates from treaty nations in federal prison were transferred to

¹⁴ However, the COE multilateral convention, to which the United States and Mexico are both signatories, does not prohibit the transfer of inmates with immigration offenses. Department of State officials told us that when a bilateral treaty exists between two treaty nations that are also signatories of a multilateral convention, the bilateral treaty takes precedence unless both countries agree to give precedence to the multilateral convention. According to the Department, the Mexican government preferred the use of the bilateral treaty for several reasons, including the immigration provisions. By contrast, the IPTU website states that requests for transfer to and from Canada are processed under the terms of the COE Convention. See <http://www.justice.gov/criminal/oeo/iptu/lists.html> (accessed May 14, 2015).

¹⁵ Of the 51,078 foreign national inmates in BOP custody in FY 2013, 36,898 (72 percent) were from Mexico, 18,662 of whom (51 percent) were incarcerated for immigration offenses.

their home countries. We found several reasons for the low transfer rate, most significantly the restrictions imposed on the BOP and the IPTU by the transfer treaty with Mexico. Other reasons for the low transfer rate included the following:

- The BOP did not effectively inform inmates about the treaty transfer program. The BOP's insufficient translation services may have kept some inmates from fully understanding and participating in the program.
- The BOP sometimes determined incorrectly that inmates were ineligible for the program, in part because its program statement on treaty transfer was incomplete and inaccurate.
- The IPTU did not consistently evaluate inmates' suitability for transfer, which resulted in disparate treatment of inmates in similar circumstances.
- Factors largely outside the Department's control limited the number of transfers that could be effected. These included the voluntary nature of the program; the reluctance of other countries, especially Mexico and Canada, to approve transfer requests their nationals made and the Department approved; and the lack of treaties with countries that have many nationals in the BOP's foreign inmate population.

Overall, our 2011 report found that from FY 2005 through FY 2010, the BOP and the IPTU combined rejected 97 percent of requests from foreign national inmates because they determined that the inmates were ineligible or not suitable for transfer. Specifically, the BOP rejected 67,455 of 74,733 transfer requests (90 percent) and forwarded 7,278 applications to the IPTU for consideration. Of these 7,278 applications, the IPTU denied 5,071 of the applications (70 percent) it received from the BOP. Although the majority of the denied requests appeared to have resulted from treaty restrictions, we found that the Department could have considered more inmates for transfer.

Finally, the OIG determined in our 2011 report that the Department incurred an estimated \$15.4 million in unnecessary incarceration costs from FY 2005 through FY 2010 because of the BOP's and the IPTU's untimely processing of requests for inmates who were ultimately transferred.

The OIG's 2011 report concluded that the Department could realize cost savings by reducing process delays and could achieve potentially significant savings by increasing the participation of eligible inmates in the treaty transfer program. The OIG made 14 recommendations to help the Department improve its efforts to effectively manage the treaty transfer program. For example, we recommended that the BOP and the IPTU coordinate to ensure that the BOP's program statement accurately reflected eligibility criteria based on treaty requirements and IPTU considerations. To reduce erroneous determinations and ensure denials were limited to cases where transfer is inappropriate, we recommended that the BOP

establish a process for reviewing case managers' eligibility determinations to ensure their accuracy.¹⁶

Scope and Methodology of the OIG Review

Our current status review assessed the Department's efforts from FY 2011 through FY 2013 to transfer foreign national offenders in compliance with the conditions of treaties between the United States and other countries. Our fieldwork, conducted from February 2014 through August 2014, examined the roles in the transfer process of the BOP and the Criminal Division, the Department of State, and other nations' embassies or ministries of justice.¹⁷ We interviewed DOJ officials and staff, as well as Department of State staff. We also reviewed documents, including those the DOJ provided in response to the recommendations in our 2011 report. In addition, we evaluated the number of inmates who requested transfer, were determined eligible and suitable, and were transferred from FY 2011 through FY 2013. Finally, using BOP data, we evaluated the effect on incarceration costs and prison overcrowding when foreign national inmates approved by the Department for transfer ultimately are not transferred to their home countries. See Appendix 3 for more information about the OIG's methodology.

¹⁶ As of April 2015, 13 recommendations had been closed and the BOP reported that it was implementing the remaining recommendation. See Appendix 2 for more details on the Department's response to the recommendations contained in the OIG's 2011 report.

¹⁷ Our review did not address the transfer of foreign nationals incarcerated in state prisons in the United States or Americans requesting transfer from foreign nations to the United States.

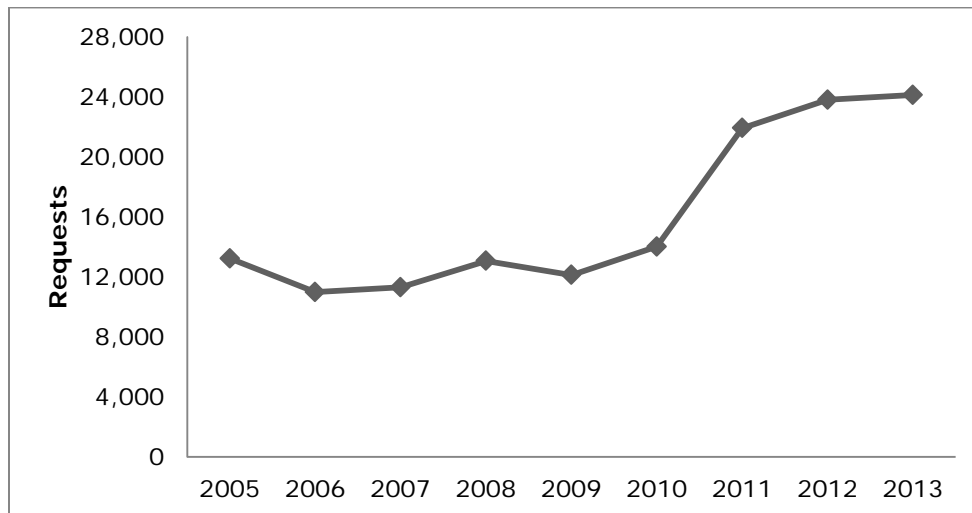
RESULTS OF THE REVIEW

Since the OIG's 2011 report on the treaty transfer program, the number of foreign national inmates applying and approved for transfers has risen. However, the number actually transferred to serve the remainder of their sentences in their home countries has remained at the levels we reported in 2011 but decreased, on average, throughout the scope of this review. In the sections below, we examine data on treaty transfers, changes the Department has made to the program that may explain changes in that data, and factors that continue to significantly limit the treaty transfer program's effectiveness.

Numbers of Transfer Requests and Actual Transfers

In our 2011 report, we found that from FY 2005 through FY 2010 the number of inmate requests for treaty transfer had ranged from a low of 10,985 in FY 2006 to a high of 14,020 in FY 2010. After the OIG's report was issued and the Department took steps to make inmates more aware of the opportunity to request transfer, the number of transfer requests increased substantially, totaling 21,921 in FY 2011 for a 56 percent increase.¹⁸ By the end of FY 2013, requests had risen another 10 percent, to 24,122 (see Figure 1).

**Figure 1: The Number of Requests for Transfer
FY 2005 through FY 2013**



Source: BOP.

Also, the number of applications for inmates the BOP determined eligible for transfer and forwarded to the IPTU for transfer consideration increased since our

¹⁸ The numbers of transfer requests are based on the number of applications the BOP forwarded to the IPTU and the number of foreign national inmates who requested transfer that the BOP determined ineligible.

last report. In FY 2010, the BOP forwarded to the IPTU applications for 1,170 inmates. According to our analysis of IPTU and BOP application data, in FY 2013 the BOP forwarded applications for 1,422 inmates — an increase of 22 percent since the 2011 review. However, despite this increase in the number of applications the BOP forwarded to the IPTU, we also found that it did not keep pace with the increase in the number of inmate requests since the time of our last review. From FY 2005 through FY 2010, the BOP forwarded 7,278 applications from 74,733 requests for transfer made by foreign national inmates, or about 10 percent of all requests. By contrast, from FY 2011 through FY 2013, the BOP forwarded 3,890 applications from 69,848 requests for transfer, or only 6 percent of all requests. We believe the following contributing factors may limit the percentage of applications submitted to the IPTU compared to the number of requests for transfer foreign national inmates made, including:

- As discussed above, while the number of foreign national inmates from treaty nations in BOP custody increased 31 percent (32,912 foreign national inmates in FY 2005 to 42,954 foreign national inmates in FY 2013), not all of these inmates are eligible for transfer consideration. For example, Mexican inmates incarcerated for immigration offenses are not eligible for transfer.
- BOP case managers told us that a revised program statement implemented during the fieldwork of our 2011 review contributed to the increase in inmates determined eligible and thus the number of applications forwarded to the IPTU by helping them to better determine an inmate's eligibility.¹⁹ However, a revised program statement drafted to address additional inaccuracies the OIG previously identified was not implemented until April 2015.

We discuss concerns we continue to have regarding the BOP's eligibility determinations, factors that may limit the number of inmates eligible for transfer consideration, and the BOP's revised program statement later in this report.²⁰

¹⁹ In August 2011, the BOP updated the December 2009 version of the program statement that we had analyzed during the fieldwork for our 2011 report. During that prior review, we identified inaccuracies in the program statement and recommended that the BOP and the IPTU coordinate to ensure that the BOP's program statement accurately reflected eligibility criteria based on treaty requirements and IPTU considerations. The August 2011 version corrected some of the inaccuracies we had identified in the program statement but did not address all the weaknesses we found. The BOP and the IPTU have since further revised the program statement. We discuss the program statement more fully later in this report.

²⁰ As part of our 2011 review, we analyzed a limited sample of cases in which the BOP determined inmates were ineligible to apply for treaty transfer and found that the BOP sometimes determined incorrectly that inmates were ineligible, in part because its program statement was incomplete and inaccurate. The OIG did not review cases in which the BOP determined inmates were ineligible for transfer as part of this status review.

In addition, according to IPTU data, the number of applications it approved for transfer increased since our 2011 report.²¹ Since the end of our last review, the average number of applications the IPTU approved each year increased 22 percent, from an average of 368 approvals per year between FY 2005 and FY 2010 to an average of 450 approvals per year between FY 2011 and FY 2013.²² While the number of applications the IPTU approved for transfer increased since our 2011 report, IPTU management reported to us that the IPTU had a backlog of about 400 cases of inmates the BOP determined eligible for transfer that were pending the IPTU's decision. In response to a working draft of this report, the Criminal Division reported to us that the IPTU's backlog has been significantly reduced. We further discuss this backlog below.

Although we found an increase in the numbers of voluntary requests for transfer, applications of inmates the BOP determined eligible for transfer, and applications the IPTU approved for transfer, the number of inmates ultimately transferred to serve the remainder of their sentences in their home countries remains low. In FY 2010, slightly less than 1 percent of the 40,651 foreign national inmates from treaty nations in BOP custody were transferred to their home countries.²³ We found that in FY 2013, 245 of the 42,954 foreign national inmates from treaty nations in BOP custody were transferred, still representing less than 1 percent of those potentially eligible for transfer (see Table 2).²⁴

²¹ The OIG did not independently assess IPTU approval and denial data as part of this status review. The numbers we cite here of applications approved or denied are based on data the IPTU reported to the OIG. The percentage of applications the IPTU approved or denied is based on the number of cases the IPTU processed each year, not the number of applications the IPTU received each year from the BOP. Furthermore, the number of applications the IPTU approved for transfer is based on the OIG's analysis of BOP and IPTU data regarding the number of eligible inmate applications. We discuss our analysis of discrepancies between BOP and IPTU application data below.

²² While outside of the scope of this status review, by contrast, the IPTU approved 152 of 158 applications (96 percent) from American national inmates requesting transfer back to the United States from FY 2011 through FY 2013, according to IPTU data. By contrast, the IPTU approved only 33 percent of applications from foreign national inmates requesting transfer out of the United States. The Criminal Division told us that, historically, the United States approves virtually all American nationals for transfer, but that different considerations and factors are used to assess the suitability of Americans for transfer.

²³ Inmates approved for transfer in a given year may not actually be transferred during that same year because of the time it takes for treaty nations to decide about possible transfers.

²⁴ The number of inmates ultimately transferred is based on the OIG's analysis of BOP and IPTU data regarding the number of inmates transferred. We discuss our analysis of discrepancies between BOP and IPTU transfer data below.

Table 2
Foreign National Inmates from Treaty Nations
in BOP Custody and Transferred,
FY 2005 through FY 2013

Fiscal Year	All Foreign National Inmates from Treaty Nations in BOP Custody	Foreign Nationals from Treaty Nations Transferred	Percentage Transferred
2005	32,912	99	0.3%
2006	32,686	209	0.6%
2007	35,769	284	0.8%
2008	36,413	260	0.7%
2009	38,385	268	0.7%
2010	40,651	305	0.8%
2011	43,703	206	0.5%
2012	43,286	231	0.5%
2013	42,954	245	0.6%

Source: BOP.

When discussing these statistics with the OIG, multiple Department officials requested that the percentage of inmates ultimately transferred be determined based on the number of eligible inmates, not the number of foreign national inmates from treaty nations in BOP custody.²⁵ When calculated based on eligibility, however, our analysis still revealed that only 1.3 percent of inmates the BOP determined eligible were ultimately transferred.²⁶ In response to a working draft of this report, Criminal Division officials stated that the calculation should be based on inmates determined both eligible and interested in transfer by the BOP, who comprised the 1,422 inmates for whom the BOP forwarded an application to the IPTU. When calculated based on that subset, 17 percent of inmates the BOP determined eligible and who were interested in transfer were ultimately transferred.

Finally, we found that the average number of inmates transferred to serve the remainder of their sentences in their home countries actually decreased since our report in 2011. Specifically, an average of 238 foreign national inmates were

²⁵ Other Department officials said that the percentage of inmates transferred should be based only on those inmates who are eligible and suitable for transfer. However, we could not determine all inmates deemed suitable for transfer because it is a subjective decision that only the IPTU can determine after it receives an application packet from those inmates interested in transfer and determined eligible by the BOP.

²⁶ This analysis is based on a total of 18,505 inmates - 1,422 whom the BOP determined eligible for transfer and forwarded an application to the IPTU and 17,083 inmates that the BOP determined were eligible but not interested in transfer and so not forwarded to the IPTU. The resulting percentage assumes that all eligibility and suitability determinations for transferred inmates were appropriately made. In response to a working draft of this report, the Criminal Division did not agree with this calculation because it was its understanding that BOP did not fully evaluate eligibility for those inmates that the BOP determined eligible but were not interested in transfer. However, this is contrary to the OIG's understanding of the BOP's process to determine an inmate's eligibility for transfer. We discuss this further below.

transferred each year between FY 2005 through FY 2010, while an average of only 227 inmates were transferred each year between FY 2011 and FY 2013.²⁷

Discrepancies in BOP and IPTU Data

We found that the BOP's and the IPTU's case management systems do not maintain consistent data on the number of applications from eligible inmates who request transfer or the number of inmates actually transferred.²⁸ We requested and received data on the number of applications and the number of inmates transferred from both the BOP and the IPTU. Each component reported different numbers of applications and inmates transferred. We provided the discrepancies to each component and asked why the discrepancies existed. Both the BOP and the IPTU reported that data entry problems by staff had resulted in inaccuracies in the application and transfer data.²⁹

We also found that the BOP and the IPTU do not compare data on the numbers of applications or inmates approved, denied, and transferred through the treaty transfer program. The IPTU Chief told us that the IPTU relies on its own records and that there is no standard practice to double check the data against the BOP's data. A BOP official told us that the BOP reports to the IPTU only the number of foreign national inmates in its custody.

For further discussion of our analysis of and the discrepancies in BOP and IPTU application and transfer data, see Appendix 3.

Changes to the Treaty Transfer Program

Since the OIG issued its previous report in 2011, the Department has made several changes to the treaty transfer program. These changes included steps to better inform inmates and staff about the program and to improve the consistency of IPTU suitability determinations. Also, the BOP, in cooperation with the IPTU,

²⁷ The IPTU reported that a transfer of Mexican nationals was canceled in FY 2013. If the transfer had occurred, 278 total foreign nationals from treaty nations would have been transferred in FY 2013. However, we did not include these inmates in our analysis of transferred inmates because they were transferred in FY 2014. In response to a working draft of this report, OEO reported that the decrease in the number of inmates transferred was attributable to lower approval rates of Mexico and Canada, the United States' two largest treaty transfer partners.

²⁸ Three case management systems track information related to prisoner transfer. First, BOP institution staff enters a foreign national inmate's interest and eligibility in the BOP's SENTRY system. The BOP's Central Office also tracks information in SENTRY, including whether an inmate's request is approved but pending a treaty nation decision, approved and awaiting a consent verification hearing, denied by the IPTU, or denied by the treaty nation. Second, the BOP's Central Office maintains the International Treaty Transfer System, which captures information on the status of application packets institutions submit. Third, the IPTU tracks transfer requests through its Prisoner Transfer Tracking System.

²⁹ The IPTU stated it was considering implementing quality control measures to avoid data entry problems.

revised its program statement to address weaknesses in eligibility determinations the OIG previously identified.

Informing Inmates and Staff about the Treaty Transfer Program

In our 2011 report, we found that language barriers, especially for inmates who did not speak English, French, or Spanish, may have kept some inmates from fully understanding the program. The BOP has since translated all documents and forms related to the transfer program into every language associated with treaty nations. The BOP also revised its program statement to direct case managers to discuss the transfer program at the inmate's initial classification and at every subsequent program review.³⁰ Each of the eight BOP case managers we interviewed during this status review told us that they discuss the treaty transfer program with inmates during initial classification and discuss re-application with all inmates previously denied at each subsequent program review. Case managers also stated that the treaty transfer program is a required aspect of institution Admission and Orientation meetings with newly arrived inmates.

Our previous report also found that BOP case managers and inmates generally did not understand why the IPTU denied transfer requests, which limited the inmates' ability to successfully reapply.³¹ We recommended that the IPTU include in its denial letters a description of how inmates could obtain further information regarding the reasons for denial, and that the IPTU provide information on what an inmate could do to become a better candidate for transfer, if applicable. In response, the IPTU revised its denial letters to state that the inmate could write to the IPTU to request more specific information about the reasons for denial and also that, if the inmate believes circumstances have changed significantly, the inmate may write to the IPTU to seek a reconsideration of the transfer decision without having to wait the 2 years from the date of the denial letter that an inmate must generally wait to reapply for a transfer.³²

³⁰ The BOP made these revisions as part of Program Statement 5140.40, Transfer of Offenders to or from Foreign Countries (August 4, 2011), which was implemented during our 2011 review. The BOP also stated that discussion of the transfer program at the initial classification and subsequent program reviews is required to be documented in the inmate's central file.

³¹ IPTU denial letters provide a brief explanation of the reason(s) why a transfer request had been denied, which mirror the IPTU's denial codes. Denial letters do not, however, discuss in detail the individual facts in each case that resulted in denial. In reviewing denial letters during our 2011 review, we found that while IPTU provided reasons for denial, the reasons cited were often vague or lacked detailed information as to how an inmate could be a better candidate for transfer, where possible. 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 of Department approval. In response to our 2011 review, the OEO provided the OIG a copy of a revised denial letter reflecting that it no longer includes this sentence.

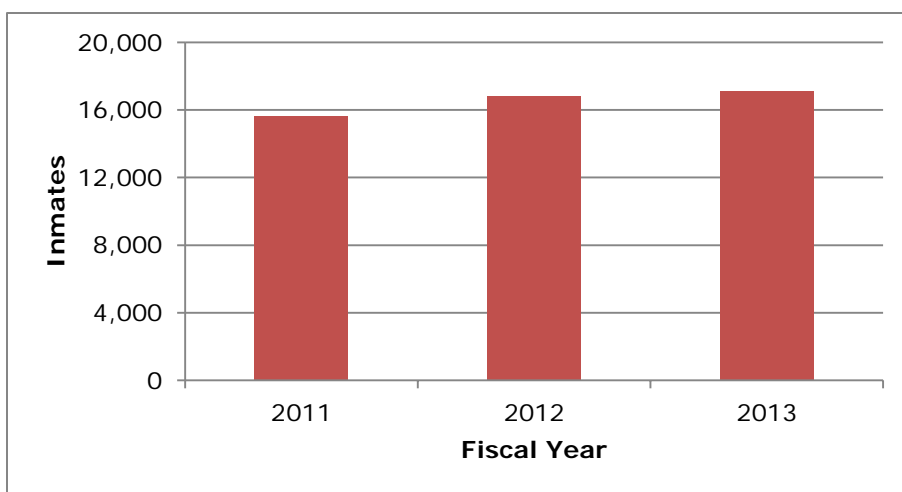
³² In response to our 2011 report, the Criminal Division issued a memorandum to all U.S. Attorneys and Department litigating components, which stated that, in determining whether to approve a transfer, the Criminal Division very seriously considers legitimate law enforcement concerns that U.S. Attorney's Offices (USAO) and Department litigating components raise. For example, in most cases, information that an inmate is a subject of another criminal investigation, is needed to

(Cont'd.)

In addition, our 2011 report recommended that the Executive Office for U.S. Attorneys (EOUSA) develop a strategy with the IPTU for communicating about the treaty transfer program to the Federal Public Defender and the courts so that defendants would be informed of the opportunity to apply for transfer. In response, EOUSA and the IPTU distributed letters to the Federal Public Defender and Federal Probation Office in each judicial district explaining the treaty transfer program and asking them to inform foreign national defendants about the program and how to apply for transfer. BOP case managers told us they have since observed that more inmates arriving at a BOP institution for the first time are already aware of the treaty transfer program.

Finally, as discussed above, the BOP informs inmates about the transfer program and forwards to the IPTU an application packet for those inmates interested in transfer and determined eligible by the BOP. However, according to BOP data, the number of inmates who are eligible but indicate that they are not interested in transfer has increased (see Figure 2).

Figure 2
Inmates Determined Eligible To Apply for Transfer but Not Interested, FY 2011 through FY 2013



Source: BOP.

As shown in Figure 2, in FY 2011, 15,646 inmates from treaty nations were eligible but indicated they were not interested in transfer.³³ This increased

testify, or has threatened the safety of a witness will result in a denial of a transfer request. See Appendix 2 for more information.

³³ In response to a working draft of this report, the Criminal Division stated that the data presented in this figure erroneously suggests that BOP made full eligibility determinations for inmates who stated they were not interested in transfer. The Criminal Division further stated that the BOP staff members have little knowledge as to what, if any, ineligibility factors may be present, and only know that the inmate is a foreign national from a treaty nation. They further stated that, if an inmate stated that he has no interest in transfer, there will be no indication on the Transfer Inquiry form whether the inmate would have been eligible had he wanted to pursue the transfer, nor will the BOP

(Cont'd.)

9 percent in FY 2013 to 17,083 inmates, or 40 percent of all foreign national inmates in BOP custody from treaty nations in FY 2013. While the BOP has access to pertinent information that the IPTU could use to identify potentially suitable candidates for transfer from those already deemed eligible, the BOP reports to the IPTU only the number of foreign national inmates in its custody. Below, we discuss further informing about the program those inmates eligible but not interested in transfer.

Weaknesses in the Current BOP Program Statement on Eligibility Determinations

According to BOP data, from FY 2005 through FY 2010, 90 percent (67,455 of 74,733) of inmates' transfer requests were deemed ineligible by the BOP and never forwarded to the IPTU for consideration. In our 2011 report, we concluded that the BOP was not correctly determining inmate eligibility in many instances 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. We discuss progress made to address these areas of concern below.

Eligibility Requirements in Treaty Agreements

As discussed in our 2011 report, the BOP's 2009 program statement contained four types of errors about the eligibility requirements contained in the treaties: (1) not all treaty transfer nations were listed; (2) information was incorrect regarding whether inmates with appeals in progress are eligible for transfer; (3) information was also incorrect regarding exceptions to the rule that inmates must have at least 6 months remaining on their sentences to be eligible; and (4) information was incomplete regarding whether inmates with committed fines are eligible for treaty transfer.³⁴

The BOP issued a revised program statement while our previous review was in progress.³⁵ BOP case managers we interviewed during this status review verified

staff have a reason to conduct further research concerning eligibility. However, according to the BOP, case managers make a full eligibility determination at initial classification and thereafter review the determination at each subsequent program review along with asking if the inmate is interested. The information regarding eligible ("interest" or "no interest") or ineligible is entered into SENTRY. A determination has to be made to enter the appropriate information in SENTRY. For those inmates who are eligible and interested the application packet is prepared by the case manager and forwarded to BOP headquarters for processing and forwarding to IPTU.

³⁴ Our fieldwork and analysis was based on BOP Program Statement 5140.39, Transfer of Offenders to or from Foreign Countries (December 4, 2009), which we found did not define "committed fine" or refer to BOP Program Statement 5882.03, Fines and Costs for "Old Law" Inmates, (February 4, 1998), which defines a committed fine as "a monetary penalty imposed with a condition of imprisonment until the fine is paid." Committed fines apply only to those inmates convicted of offenses committed before November 1, 1987.

³⁵ BOP, Program Statement 5140.40 (August 2011), replaced BOP Program Statement 5140.39 (December 2009), which we analyzed during our fieldwork for the 2011 report.

that the revised program statement was being used to determine inmates' eligibility for transfer and that it provided more information for determining eligibility. However, the revised program statement did not address all the weaknesses we found in the previous version, including clarifying information on the eligibility of inmates with pending appeals. In our previous report, we recommended that the BOP and the IPTU coordinate on further revisions to ensure that the program statement accurately reflects eligibility criteria based on treaty requirements and IPTU considerations. In April 2015, the BOP and the IPTU issued a second revised program statement in this regard.

According to the BOP and the IPTU, the latest revisions to the program statement also required revisions to the C.F.R. governing the administration of the program. The BOP's Office of General Counsel prepared proposed C.F.R. changes and submitted them to the *Federal Register* for a public comment period that ended in March 2014. In November 2014, the BOP reported that the final rule was approved by the Department, published in the *Federal Register*, and finalized. The second revised program statement was negotiated with the BOP union in January 2015 and was signed by the BOP Director and implemented in April 2015.

Case Manager Training on Inmate Eligibility

Our 2011 report found that training the BOP provided case managers on how to determine an inmate's eligibility for treaty transfer was based on the program statement that contained inaccuracies regarding eligibility requirements. We recommended that the BOP ensure proper training for all staff involved in treaty transfer determinations. The BOP concurred and provided to staff refresher training that focused on the eligibility criteria. Case managers we interviewed as part of this status review confirmed that they have since received training on the treaty transfer program, including the application process and eligibility determinations. According to the BOP, the eligibility criteria explained in its refresher training includes clarification on committed fines, pending appeals, and collateral attacks.³⁶ The BOP also stated that all staff involved in transfer determinations will also be provided training on the second revised program statement.

Institution Management Review of Case Managers' Eligibility Determinations

Our 2011 review found that BOP management did not sufficiently review case managers' eligibility determinations.³⁷ We concluded that errors made by case managers could have been discovered if prison management had reviewed determinations. We recommended that the BOP establish a process for reviewing

³⁶ "Collateral attack" is a broad term that refers to a motion, other than a direct appeal, filed by an inmate seeking to overturn his conviction or sentence.

³⁷ According to 28 C.F.R. § 527.44, BOP management is required to verify that the inmate is qualified for transfer. Of the 18 prison management officials we interviewed for our 2011 report, only 2 said they verified the case managers' eligibility determinations, while 16 said they reviewed application packets only for spelling and grammar mistakes, and to ensure that all required documents were included.

case managers' eligibility determinations to ensure their accuracy. In response, the BOP revised its program statement to include a process for supervisors to review eligibility determinations made by staff.³⁸ The case managers we interviewed as part of this status review told us that their supervisors review application packets to ensure eligibility determinations are accurate.

Despite the BOP's efforts to improve the accuracy of eligibility determinations, we continue to have concerns. For example, in FY 2013 the BOP deemed 22,700 foreign national inmates ineligible for transfer consideration, according to BOP data. A large portion of these foreign national inmates are likely to be ineligible for transfer because they are Mexican nationals incarcerated for immigration offenses (18,662 in FY 2013). However, not all Mexican nationals are incarcerated for immigration offenses, leaving thousands of Mexican inmates and other foreign national inmates from treaty nations potentially eligible for transfer. In addition:

- The BOP's second revised program statement, intended to address incomplete and incorrect information regarding inmate eligibility that we identified during our 2011 report, was not implemented until April 2015 — well over 3 years after the OIG issued our last report. Therefore, during the intervening period, case managers were determining eligibility based on incomplete and incorrect information.
- Inmates initiate the application process by reviewing and signing a transfer inquiry form, after which the inmate's case manager determines his or her eligibility to apply for transfer. The transfer inquiry form states that an inmate is not eligible to apply for transfer if the inmate has a pending appeal or collateral attack.³⁹ However, based on our review of IPTU denial codes, the IPTU tracks inmates denied transfer who have a pending appeal or collateral attack, indicating that the IPTU incorrectly receives applications from the BOP for inmates who are ineligible to apply for transfer consideration at the time of request.⁴⁰
- In response to our 2011 report, the BOP revised its Program Review Guidelines for Correctional Programs (guidelines) to, in part, determine whether case manager decisions regarding eligibility were made correctly. According to the BOP, from FY 2011 through FY 2013, deficiencies related to

³⁸ The BOP has also revised its transfer inquiry form, which indicates an inmate's interest in treaty transfer and his or her eligibility as determined by a BOP case manager, to require supervisory review and signature. The revised transfer inquiry form was published in April 2015.

³⁹ The transfer inquiry form also states that the inmate may apply when the appeal or collateral attack has concluded.

⁴⁰ The IPTU also has denial codes for "unpaid fines" and "insufficient remaining sentence," indicating that the IPTU also incorrectly receives applications from the BOP for inmates with committed and non-committed fines, as well as less than 6 months remaining to serve on their sentences, which are two eligibility requirements established in each program statement we have assessed during both of our reviews of the treaty transfer program.

the treaty transfer program based on its revised guidelines were found in 10 of 106 institution program reviews (9 percent). Of the 10 deficiencies, 3 were related to staff making incorrect decisions on program eligibility. See below for more information.

We believe the additional information in the BOP's second revised program statement addresses the errors we previously identified and may help improve the accuracy of eligibility determinations. For example, rather than having a list of treaty nations as an attachment to the program statement, the second revised program statement refers BOP staff, inmates, and the public to three different sources where the most-up-to-date list of treaty nations is available. Also, the second revised program statement clarifies that inmates with an outstanding fine or unpaid restitution are eligible to apply for transfer and provides more information regarding those inmates who had "committed fines."⁴¹ In addition, we previously found that neither an appeal nor a collateral attack was clearly defined in the program statement. However, the second revised program statement defines both.⁴² Finally, like the previous program statement, the second revised program statement states that an inmate is ineligible for transfer if he or she has less than 6 months of the current sentence remaining to be served at the time of request for transfer. However, unlike the previous program statement, the second revised program statement acknowledges that exceptional circumstances could warrant consideration of an inmate with less than 6 months remaining on his or her sentence, such as if the inmate is suffering from a life-threatening illness and could die before the completion of his or her sentence.

While the second revised program statement may help improve the accuracy of eligibility determinations, if the Department wants to ensure it appropriately uses this program to the fullest extent possible, we believe it should undertake a review of data to determine why more eligible inmates are not approved for transfer.

Department Efforts To Make IPTU Suitability Determinations More Consistent

Our 2011 report found that the IPTU's determinations of inmates' suitability for transfer were inconsistent and that the lack of consistency resulted in disparate treatment of inmates in similar circumstances. In response, OEO and IPTU management took a number of steps to improve the consistency of suitability determinations:

- reviewing the suitability criteria with all IPTU attorneys and analysts,

⁴¹ The second revised program statement states that a small class of inmates who committed their offense before November 1, 1987, and have had court-imposed committed fines are ineligible for consideration for transfer until the committed fine is paid or until the court imposing the committed fine permits the inmate to proceed with his/her transfer request.

⁴² The second revised program statement defines an appeal as a challenge to the decisions made on an inmate's conviction and a collateral attack as a motion that challenges some aspect of a former judgment due to an allegation of injustice or unconstitutional treatment.

- holding regular meetings with IPTU staff to routinely review the suitability criteria and to clarify their application, and
- adding a level of review in cases dealing with proposed denials.

During our status review, the IPTU Unit Chief told us that these changes remained in place. She said that she holds one-on-one discussions with staff if she becomes concerned that guidelines are being interpreted inconsistently. She also said that IPTU management holds biweekly meetings with staff to discuss the application of denial codes associated with the IPTU's guidelines, as well as any issues she identifies with the application of the guidelines.⁴³

We re-interviewed six IPTU attorneys and analysts we met with during our previous review to discuss for this status review the changes to the suitability process. These IPTU staff told us that the one-on-one meetings and biweekly meetings with IPTU management provide them an opportunity to discuss the application of suitability criteria. For example, an IPTU attorney told us that Mexican inmates' domiciliary status is an issue frequently discussed because the term "domiciliary" is defined in the treaty as someone with "intent to remain" in a country. The meaning of "intent to remain" is a frequent topic of discussion.⁴⁴

Also, we found that the OEO had created an additional level of review to consider those applications the IPTU recommends for denial. The OEO Director told us that the OEO Deputy Director reviews all cases the IPTU recommends for denial. In those cases where a disagreement between the IPTU and the OEO Deputy Director occurs, the OEO Director further reviews the case.

In addition, during our 2011 review, we were told that it was easier for IPTU staff to deny than to approve a request because finding a single reason to deny was viewed as easier than collecting adequate support to approve a transfer. In comparison, as part of this status review, IPTU officials and staff told us that IPTU staff is now reviewing inmate requests for reasons to approve them rather than to deny them. For example, an IPTU attorney told us that staff is approving more cases and attributed it to the fact that IPTU management is approving more of the cases. The IPTU's Chief described the IPTU as more "forward leaning" than it used to be and told us that the IPTU is now less likely to deny a request as a "knee-jerk reaction." She added that although there was never any intent to deny requests and that there has been no change in the IPTU's policy in how it determines an inmate's suitability, there has been a push to approve applications. As a result, the IPTU is looking more closely at each case and being more flexible with how IPTU

⁴³ The 2003 Prisoner Transfer Treaty Requirements and Guidelines govern how the IPTU evaluates treaty transfer requests and how analysts record the reasons for denials using codes derived from the guidelines.

⁴⁴ Article IX(4) of the bilateral treaty between the United States and Mexico states that "A 'domiciliary' means a person who has been present in the territory of one of the parties for at least five years with intent to remain permanently therein."

suitability guidelines are applied. The Deputy Assistant Attorney General for the Criminal Division told us that there is now more emphasis on the importance of approving applications than in the past. However, we have concerns regarding the low number of applications the IPTU approves. For example, in FY 2013, the BOP forwarded to the IPTU applications for 1,422 inmates determined eligible for transfer. While the IPTU does not make determinations on each application it receives each year, IPTU approved only 494 applications in FY 2013.

Although we did not examine case files as part of this status review, based on interviews with IPTU staff and management and OEO officials, it appears the steps IPTU and OEO officials told us they have implemented represent a meaningful effort to improve and to ensure the consistent application of suitability guidelines. To determine whether an inmate is suitable for transfer, the IPTU provides its analysts with Prisoner Transfer Treaty Requirements and Guidelines (guidelines) that govern how they are to evaluate treaty transfer requests. The IPTU is in the process of revising its suitability guidelines. The IPTU Chief told us that there are no "drastic changes" planned but that the addition of examples and clarifications, particularly concerning an inmate's domiciliary status or the effect of any weapons charges, were under consideration. We believe the Department should participate in the revisions of the IPTU guidelines to facilitate targeting the most suitable inmates for transfer.⁴⁵

Formal Reconsideration Process

In our 2011 report, we found that no formal reconsideration process existed for inmates whose transfer requests were denied and that the only form of appeal was for inmates to write to ask that their cases be reconsidered. Inmates whose transfer requests the IPTU deny must generally wait 2 years before reapplying. We concluded that a more formalized reconsideration process would provide more opportunities for an inmate to be considered for transfer. We recommended that the IPTU fully implement a reconsideration process that requires IPTU staff to follow up on the requests they have denied so that inmates may reapply for transfer when their circumstances change before the 2 year waiting period ends. The IPTU has since implemented a system to ensure timely follow-up on cases and a mechanism to track and monitor cases for reconsideration.

The IPTU Chief told us that cases that are denied because of "potentially removable" reasons are now tracked in a "tickler" system.⁴⁶ An IPTU attorney told

⁴⁵ In the past, the Department has used working groups when revising inmate eligibility for programs that may affect their release. For example, the Department formed a working group in 2013 to consider changes to the BOP's compassionate release policy. The working group revised the BOP policy to expand eligibility guidelines for aging inmates, and the Department included these revisions in its Smart on Crime initiative. See DOJ, OIG, *The Impact of an Aging Inmate Population on the Federal Bureau of Prisons*, Evaluation and Inspections Division Report 15-05 (May 2015), <https://oig.justice.gov/reports/2015/e1505.pdf#page=1> (accessed May 14, 2015).

⁴⁶ Potentially removable reasons are those that may be resolved by a change in the inmate's circumstances. For example, if an inmate was denied transfer because of a pending appeal and the

(Cont'd.)

us that when an inmate is denied a transfer for potentially removable reasons, the IPTU secretary sets an alert in the internal e-mail system to remind the analyst 6 months after the denial date to determine whether the reasons for denial have been resolved. The attorney stated that when she receives a reminder, she contacts the relevant agency. If the denial reasons have been resolved, the IPTU moves forward with the transfer rather than making the inmate wait 2 years from the date of the previous denial. If the denial reasons have not changed, the secretary sets a new alert. IPTU staff told us that while they had always informally tracked potentially removable denial reasons, the formal alert system allows inmates whose requests have been denied to have those requests reconsidered sooner.

IPTU Resources for Improving the Transfer Program's Management

We found that actions the BOP and the IPTU have taken to improve the management of the treaty transfer program have increased the caseload and other responsibilities of the IPTU staff, but that there has not been a corresponding increase in available resources. As discussed above, the number of applications the BOP submits for consideration has increased significantly. As a result, we found that while caseloads vary by employee, the average annual caseload for the IPTU staff increased 14 percent, from 138 cases per employee in FY 2011, to 158 cases per employee in FY 2013. An IPTU attorney told us that she used to have 20 to 25 cases to review at any time but now has about 40 cases; if she was not working extended hours on her caseload she would have about 50 cases. The IPTU Chief said at that time IPTU staff each had a backlog of 50 cases or more and that sometimes, due to other responsibilities, they were unable to satisfy IPTU's target of processing 15 cases per month. The IPTU Chief added that the IPTU had a backlog of about 400 cases caused by an influx of cases from the BOP, as well as the impact of the October 2013 furlough of the entire IPTU staff.⁴⁷ Some of these cases had been pending a transfer recommendation for over 90 days but the majority had not. In response to a working draft of this report, OEO informed us that the backlog and caseload issues no longer exist in the IPTU, and reported that, as of June 18, 2015, there were only 55 pending cases in the IPTU and all had been pending less than 70 days.

In our 2011 report, we noted that the IPTU was not evaluating applications for transfer within the time the IPTU management expected.⁴⁸ We attributed some of the IPTU's untimeliness to a lack of staff, the additional responsibilities staff have

appeal is resolved, the reason for the original denial can be removed to make the inmate more suitable for transfer.

⁴⁷ A furlough occurs when there is a lapse in government funding. During a furlough, an agency must shut down all activities funded by annual appropriations that are not accepted by law.

⁴⁸ Assessing the timeliness of the IPTU's processing of requests received, approved, or denied was not within the scope of this status review. However, we note that delays in transferring potentially suitable inmates can result in unnecessary incarceration costs and make inmates who are approaching 6 months remaining on their sentence ineligible for transfer.

to fulfill, as well as the lack of a system to track staff's evaluation of application packets. In response, the IPTU implemented formal timeliness requirements to evaluate application packets within 90 days and instituted a tracking system. We also found that the IPTU staff is now required to report to the IPTU management every 2 weeks on the status of cases pending for 70 days or more.⁴⁹ IPTU staff told us that completing status reports requires tracking down specific case details and dates and describing what has been done on the case and what remains to be done. While these changes document the information necessary to track the processing of the cases, IPTU staff expressed concern that the time spent on this documentation takes time away from reviewing cases.

Another finding in our 2011 report was that the IPTU did 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. As discussed previously, the IPTU revised its denial letters to state that inmates can write to the IPTU to obtain further information regarding the reasons for denials and how to become a better candidate for transfer. IPTU staff said they now receive many more letters from inmates requesting information about denials. They told us that they respond to every letter from inmates and that the effort was "burdensome" and "resource and time intensive," taking time away from reviewing applications for transfer. Despite the increase in transfer applications and inmate correspondence, we found that the Department has not increased the IPTU's permanent staff.

Finally, we found that the IPTU lacks staff to further improve the effectiveness of the transfer program. According to the IPTU Chief, most IPTU resources are focused on processing requests, managing transfers, and responding to urgent requests for information or assistance related to the transfer program. As a result, time and resources to consider how to improve the effectiveness of the transfer program are limited. When asked what new actions she believed would improve the effectiveness of the transfer program, the IPTU Chief offered the following examples:

- planning and conducting regular training with the treaty nations;
- planning and conducting regular meetings with the treaty nations to discuss all aspects of the program, including transfers and the speed with which treaty nations process and decide cases;
- enlisting the support of Department officials in targeting treaty nations having low approval rates and working to develop strategies to encourage greater participation of the treaty nations in the transfer program; and

⁴⁹ The IPTU Chief also told us that she and the OEO Director meet every other week and review cases coming up on 90 days of processing time, the number of cases likely to be completed before the 90-day deadline, and what is preventing a case from making the deadline. She said that she also reviews status reports to assess productivity and ensure the staff moves all cases forward.

- collecting information on how each treaty nation administers sentences and on the availability of conditional release to prepare a resource for IPTU staff to use when answering inquiries from U.S. Attorneys' Offices (USAO), law enforcement, and other sources.⁵⁰

We inquired of the IPTU whether it has the resources to identify inmates who could potentially file meritorious treaty transfer requests. The IPTU Chief told the OIG that she believes that proactively identifying potentially eligible inmates for transfer would be a poor and ineffective use of government resources. The IPTU Chief said that without an application packet, the only source of information that the IPTU has about an inmate is from the BOP's SENTRY case management system, which lacks information critical to determining whether an inmate is suitable for transfer.⁵¹ She also noted that using data to identify potentially eligible inmates would not address situations where an inmate has made a conscious decision not to apply or where a treaty nation will not approve the transfer of an inmate.

In addition, the IPTU Chief said that without an increase in resources the IPTU cannot strategize or "be creative" as to how the Department could further improve the effectiveness of the transfer program.⁵² For example, the IPTU Chief

⁵⁰ In response to our 2011 report, the Criminal Division issued a memorandum to all U.S. Attorneys and litigating components that, among other things, sought to address and dispel misconceptions prosecutors may have regarding the treaty transfer program. For example, some prosecutors mistakenly believe that an inmate would serve less time in custody or be immediately released if transferred to his or her home country. The memorandum states that treaties require receiving countries to apply their own laws and procedures regarding the execution of a sentence and that sometimes this will result in an inmate serving less time. But in other cases, an inmate may serve more time than he or she would have served in the United States. Regardless, this concern alone is not a sufficient reason for the United States to deny an inmate's request for transfer.

The memorandum also addresses concerns that transferred inmates will return to the United States and commit new crimes. The memorandum states that, although there is no guarantee against recidivism, the possibility that a foreign national will return to the United States after completing a transferred sentence can be minimized by ensuring that removal orders are obtained prior to transfer and by limiting transfer approvals to candidates who have strong family ties to their home countries and minimal or no prior criminal record. Also, the IPTU Chief told us that the IPTU provides immigration authorities and the Department of State with lists of transferred inmates for their information. In addition, the IPTU Chief said that it is policy to deny transfer on those uncommon occasions when a transferred inmate returns to the United States, commits a new crime, and seeks to transfer for a second time. Finally, we found in our 2011 report that of 1,100 foreign national inmates transferred from FY 2005 through FY 2010, only 33 (3 percent) later returned to the United States and were re-arrested within a 3 year period.

⁵¹ For example, the IPTU Chief said that SENTRY does not contain information about the location of the inmate's family and friends, the length of time the inmate has been in the United States, or residential and work history in the United States. Also, she said that SENTRY does not contain complete information about the specifics of the inmate's crime, immigration history or criminal record, or any indication of what positions the USAO or law enforcement would take on the potential transfer of the inmate. Finally, she said that SENTRY contains no indication of whether the inmate has a pending appeal that would preclude eligibility for transfer.

⁵² In response to a working draft of this report, the Criminal Division stated that the IPTU Chief did not intend to suggest that with the current level of resources IPTU staff would be unable to develop any strategy or approach that could advance the program.

suggested to us that BOP could increase the number of applications forwarded to the IPTU by providing a detailed document to foreign national inmates from treaty nations that outlines the transfer program, its requirements, and the processing steps for transfer application. However, she said that the IPTU is not in a position to provide this document because the BOP maintains custody of inmates and is best positioned to inform inmates, such as those eligible but not interested in transfer, about the transfer program.⁵³

Finally, the IPTU Chief added that increasing the number of applications would be successful only if the treaty countries obliged by accepting a greater number of their nationals for transfer. The IPTU Chief said additional resources could help the IPTU better address the treaty nations' reluctance to take back their nationals or adjudicate IPTU-approved requests more quickly. We discuss these issues further below.

In response to a working draft of this report, the Criminal Division stated that the Department is committed to doing what it reasonably can to ensure that eligible inmates are informed about the availability of the transfer program. Although it maintains that it would be neither practical nor productive for IPTU staff to scan SENTRY records in search of suitable transfer candidates, it acknowledges that there are positive actions that can be taken to raise the profile of the transfer program in federal prisons. It further reports that OEO and BOP have plans to prepare jointly a brochure that will discuss all stages of the transfer process and to distribute the brochure to foreign national inmates, and that work on this brochure will begin in the summer of 2015.

Also, as discussed above, EOUSA and the IPTU distributed letters to the Federal Public Defender and Federal Probation Office in each judicial district explaining the treaty transfer program, asking them to inform foreign national defendants about the program and how to apply for transfer. In response to a working draft of this report, the Criminal Division stated that it plans to re-distribute its letters to federal public defenders and criminal defense organizations to remind them of the availability of the transfer program.

Factors That Continue To Limit the Program's Effectiveness

Although we believe the Department has taken a number of steps to increase the number of applications and improve the management of the treaty transfer program, factors largely outside the Department's direct control continue to significantly limit the number of foreign national inmates from treaty nations who

⁵³ As discussed above, the BOP discusses the transfer program at each inmate's admission and orientation, initial classification, and every program review. The IPTU Chief stated that a detailed document could be provided by the BOP to foreign national inmates from treaty nations to reiterate information provided by the BOP, as well as to provide additional details that are not possible to present during these required meetings. She stated that the document, provided to inmates when designated to an institution and again at subsequent program reviews, could provide an inmate with information about the program that encouraged them to consider applying.

are ultimately transferred. As discussed in the Introduction, four of those factors are the voluntary nature of the transfer program, the lack of treaty agreements with all foreign countries represented in the BOP's inmate population, the restrictive criteria imposed by treaty nations that significantly limit the number of foreign national inmates eligible for transfer consideration, and the failure of foreign countries to accept inmates whom the United States has approved for transfer. Inmates approved by the Department but ultimately not transferred affect incarceration costs and the BOP's ability to manage its inmate population. We discuss these effects in the sections below.

Cost of Incarcerating Inmates Approved for Transfer but Ultimately Not Transferred

Although the Department has increased the number of inmates approved for transfer, the Department's approval does not ensure that a treaty nation will also approve a transfer. According to IPTU data, an additional 959 inmates who had been approved for transfer by the Department were still in BOP custody as of February 2014 because their transfer was still pending home nation adjudication, had been denied by the home nation, or was withdrawn by the Department because the home nation did not make a decision with enough time left on the inmate's sentence to permit the transfer.⁵⁴ Our analysis of IPTU and BOP data showed that the Department spent \$26 million from FY 2011 to FY 2013 to house these inmates in BOP custody.

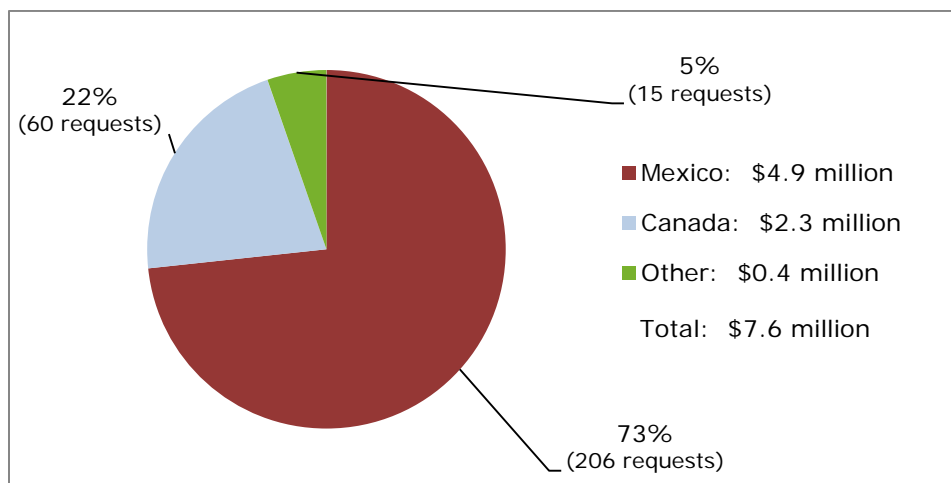
Of these 959 inmates approved by the Department for transfer, 281 (29 percent) were denied transfer by treaty nations.⁵⁵ According to our analysis, the Department incurred approximately \$8 million in costs to incarcerate these 281 inmates until their requests were ultimately denied by a treaty nation (see Figure 3).⁵⁶

⁵⁴ Of the 959 inmates, the Department approved 171 prior to FY 2011. We included these inmates in our analysis because their requests were denied, still pending adjudication by a treaty nation, or withdrawn during the period of our review.

⁵⁵ Of the 281 inmates whose applications were denied by their respective foreign country from FY 2011 through FY 2013, 154 remained in BOP custody as of October 2014 and 127 had been released. Of the 127 inmates who were released, 80 (63 percent) were deported and 47 were released from BOP custody to the custody of ICE.

⁵⁶ We used BOP cost data and IPTU approval dates to determine the costs to incarcerate these 959 inmates. For example, we applied the daily cost to incarcerate 281 inmates approved by the Department but ultimately denied by a treaty nation from the date the IPTU approved the request to the date the treaty nation denied the request. The BOP incurs additional costs to incarcerate these inmates from the dates their transfer requests were denied to the end of their sentences, but neither we nor the BOP can project these costs, some of which will not be incurred until future years. For more information, see Appendix 3.

Figure 3
Incarceration Costs Incurred for Requests
Ultimately Denied by a Treaty Nation



Source: OIG analysis of BOP and IPTU data.

According to IPTU data, 538 of these 959 transfer requests approved for transfer by the Department were still pending adjudication by the home treaty nation as of February 2014, and 140 were withdrawn by the Department because the home treaty nation had not made a decision on the transfer request and the inmate's remaining sentence was insufficient under the treaties for transfer.⁵⁷

We found that, on average, for the 538 inmates whose transfer requests were pending treaty nation adjudication as of February 2014, the inmates had been waiting for a decision from the treaty nations for 371 days.⁵⁸ Based on our review of BOP and IPTU data, the Department incurred \$13 million in incarceration costs for these 538 inmates to remain in BOP custody while their requests were pending adjudication from 31 treaty nations. Figure 4 shows the costs to incarcerate inmates who were approved for transfer by the Department but were pending

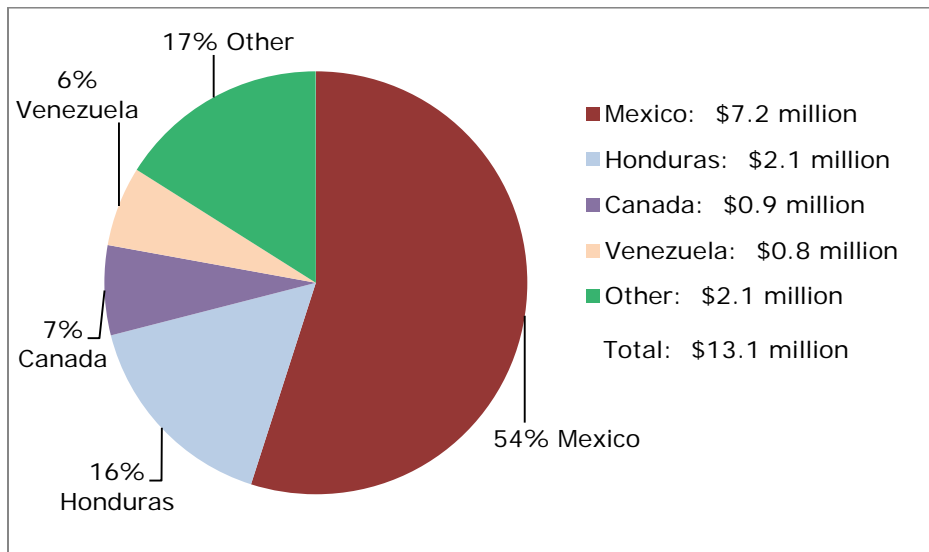
⁵⁷ In response to a working draft of our 2011 report, the Criminal Division stated that all transfer treaties require that for an inmate to be eligible for transfer a certain minimum period, typically 6 months, must remain on their sentence. The Criminal Division stated that there are two reasons for this requirement. First, for there to be a reasonable chance of rehabilitation, there must be a sufficient period of time to allow the inmate to transfer to his or her home country and to become re-acclimated with its culture. Second, it usually takes considerably longer than 6 months for both the United States and the home country to process the transfer request and to execute the transfer. When less than 6 months remain on a sentence, there will be too little time to complete the transfer process. Thus, in all likelihood, the inmate would be released before the home country is able to escort the inmate home. Due to these reasons, the Department withdraws its approval for transfer when a home country does not approve a request with enough time remaining on the inmate's sentence.

⁵⁸ In 2013, the IPTU began periodically reviewing cases pending responses and contacting treaty nations twice a year to remind them of the cases. To give treaty nations a reasonable time to respond, the IPTU sends notices only for cases that have been pending for at least 6 months.

treaty nation adjudication, as well as the percentage of the costs incurred by country.

Figure 4

Department-Approved Requests Pending Treaty Nation Adjudication and Percentage of Incarceration Costs Pending a Treaty Nation Decision by Country



Source: OIG analysis of BOP and IPTU data.

For those 140 inmates whose transfer approval the Department withdrew because the treaty nation failed to decide the case and the inmate’s remaining sentence was insufficient for transfer, we found the Department incurred \$5 million in costs to incarcerate them while their requests were pending a decision by their home country. In addition, of those 140 inmates whose applications were withdrawn, 132 were released from BOP custody.⁵⁹ Of these 132 inmates, 26 (20 percent) were deported and 105 inmates were released to the custody of the Department of Homeland Security’s Immigration and Customs Enforcement (ICE).⁶⁰ Once transferred to the custody of ICE, the BOP cannot confirm whether inmates were deported or released into the United States.

Inmate Management and Prison Overcrowding

Our 2011 report noted that from FY 2005 through FY 2010, foreign national inmates from treaty nations represented, on average, 19 percent of the BOP’s total inmate population. From FY 2011 through FY 2013, that increased to 21 percent. The BOP has been housing fewer of these inmates in the 118 facilities that it

⁵⁹ According to BOP data, six of these inmates remained in BOP custody as of October 2014. Two additional inmates were released after we completed our analysis.

⁶⁰ One inmate was released to the custody of the State of California because of pending charges.

manages and more in its 14 privately managed contract prisons.⁶¹ For example, according to BOP data, in FY 2013 foreign national inmates comprised more than 82 percent of the contract prisons' inmate population. Table 3 shows the shift in where foreign national inmates are housed.

Table 3
Sentenced Inmates in BOP and Contract Prisons,
FY 2011 through FY 2013

Fiscal Year	BOP Institutions			Contract Prisons		
	Inmates	Treaty Nation Inmates	Other Foreign Nationals	Inmates	Treaty Nation Inmates	Other Foreign Nationals
2011	165,842	22,111	4,815	25,869	20,253	4,155
2012	164,257	20,417	4,551	28,253	22,856	3,882
2013	164,566	18,967	4,224	29,086	23,970	3,875

Note: The numbers of inmates in BOP institutions and contract institutions do not include inmates with "unknown citizenship" and inmates housed in residential reentry facilities.

Source: BOP.

We found that the increase in the foreign national inmates housed in contract prisons results from the BOP's use of Criminal Alien Requirement (CAR) contracts, which are firm-fixed price, performance-based service contracts.⁶² The BOP uses CAR contracts for the management and operation of correctional facilities housing low-security, non-U.S. citizen male inmates in BOP custody.⁶³ Based on our review of the statement of work for CAR contract prisons, we found that contract prisons are utilized to house adult male inmates, primarily Mexican nationals with 90 months or less remaining on their sentences.

From FY 2011 through FY 2013, the population of the BOP's contract prisons increased 12 percent, from 25,869 to 29,086. Over that same time, we found that contract prisons were consistently 13 percent overcrowded. (See Table 4.)⁶⁴

⁶¹ During the time of our review, the BOP managed 118 institutions. In the course of our review, the BOP activated three additional institutions. These institutions were not included in our analysis.

⁶² The BOP reported to us that when beds in contract prisons are available, inmates who are deportable aliens and meet other criteria are moved from BOP-managed institutions to contract prisons to help alleviate the crowding in low-security BOP institutions. As of September 2014, male, low-security BOP institutions were operating at 29 percent over rated capacity, according to the BOP.

⁶³ The OIG is currently examining how the BOP monitors its contract prisons, whether contractor performance meets certain inmate safety and security requirements, and how contract prisons compare to similar BOP institutions according to certain inmate safety and security indicators.

⁶⁴ Overcrowding means that the number of inmates incarcerated in any institution exceeds the institution's rated capacity. The rated capacity is the number of inmates an institution is designed to hold.

Table 4
Overcrowding in BOP Contract Prisons and Percentage of
Treaty Nation Inmates in Contract Prisons
FY 2011 through FY 2013

Fiscal Year	Rated Capacity	Total Inmates	Percentage Over Rated Capacity	Foreign National Inmates	Treaty Nation Inmates	Percentage of Foreign National Inmates from Treaty Nations
2011	22,268	25,236	13.3%	23,778	19,674	83%
2012	22,268	25,141	12.9%	23,630	19,889	84%
2013	23,005	25,936	12.7%	24,695	20,907	85%

Note: Table 4 excludes data from a contract prison opened in FY 2011 with a rated capacity of 2,760 but a population of just 130 inmates. By FY 2013, this prison's total inmate population had increased to 3,150 inmates, 97 percent of whom were treaty nation inmates. Also, the contract prisons' rated capacity increased in FY 2013 because two prisons increased their rated capacity.

Source: BOP.

Table 4 also illustrates the effect of incarcerating foreign national inmates from treaty nations on contract prisons' overcrowding. Specifically, from FY 2011 through FY 2013, the number of foreign national inmates in contract prisons increased 4 percent, from 23,778 in FY 2011 to 24,695 in FY 2013. Over that same time, foreign national inmates from treaty nations in contract prisons increased 6 percent, from 19,674 in FY 2011 to 20,907 in FY 2013. As a result, 85 percent of all foreign national inmates in contract prisons were from treaty nations in FY 2013.⁶⁵

As the BOP's foreign national inmate population increases and more foreign national inmates are designated to contract prisons, the populations of these prisons will increase and could approach limits stipulated in the BOP's contracts.⁶⁶ We found that increasing the transfer of inmates approved by the Department to serve their sentences in their home country could help the BOP alleviate

⁶⁵ The BOP considers all foreign national inmates to be "deportable aliens" unless ICE or the Department's Executive Office for Immigration Review has determined that deportation proceedings are unwarranted or if there is a finding not to deport at the completion of deportation proceedings. See BOP Program Statement 5100.08, Inmate Security Designation and Custody Classification (September 12, 2006). At the end of FY 2013, 98 percent of all foreign national inmates in BOP custody were identified as deportable aliens. We did not evaluate as part of this status review whether deportation proceedings were initiated at the end of foreign national inmate sentences.

⁶⁶ The Government Accountability Office (GAO) reported in September 2012 that, "according to BOP officials, by contract with BOP, privately run prisons cannot exceed 15 percent overcapacity." GAO, *Bureau of Prisons Growing Inmate Crowding Negatively Affects Inmates, Staff, and Infrastructure*, GAO-12-743 (September 12, 2012).

overcrowding in general, particularly in contract prisons.⁶⁷ For example, as discussed above, we found that 959 inmates were approved by the Department for transfer but had remained in BOP custody during the period from FY 2011 through FY 2013 because the request was still pending a home treaty nation decision, had been denied by the home treaty nation, or had been withdrawn by the Department because the home treaty nation did not make a decision with enough time left on the inmate's sentence to permit the transfer. Of those 959 inmates, 693 (72 percent) were incarcerated in contract prisons. We found that had these 693 inmates been approved for transfer by their home countries, overcrowding in contract institutions would have decreased from approximately 13 to 10 percent in FY 2013.

Potential Cost Savings

In FY 2013, 20,907 inmates from treaty nations were housed in BOP contract prisons.⁶⁸ Using FY 2013 BOP annual cost data to incarcerate an inmate at a contract prison (\$21,838), we determined that if only 1 percent of the inmates (204) applied and were transferred to serve their sentences in their home countries, the BOP could potentially save \$4.5 million in annual incarceration costs.⁶⁹ If 3 percent (611) or 5 percent (1,018) of the inmates applied and were transferred to serve their sentences in their home countries, the BOP could potentially save \$13.3 million or \$22.2 million, respectively, in annual incarceration costs.

Recently, the Department has announced initiatives intended to address prison overcrowding and rising incarceration costs. For example, in August 2013, the Department announced the Smart on Crime initiative with five goals, including ensuring that finite resources are devoted to the most important law enforcement priorities. Attorney General Holder stated that the Smart on Crime initiative would "help to rein in federal prison spending while focusing limited resources on the most serious threats to public safety" and help to ease the nation's overcrowded prison system.⁷⁰

⁶⁷ As discussed in the OIG's Top Management and Performance Challenges Facing the Department of Justice for 2014, the Department's FY 2014–2018 strategic plan includes an outcome goal to reduce system-wide crowding in federal prisons to 15 percent by FY 2018.

⁶⁸ For the purpose of this analysis, we determined potential cost savings based on 20,368 inmates housed in contract prisons. We excluded 539 inmates from the 20,907 inmates housed in BOP contract prisons in FY 2013. We excluded 245 inmates who were ultimately transferred because the Department experienced these cost savings. We also excluded 294 inmates whose Department-approved transfer requests were either denied by a treaty nation or withdrawn because treaty nations failed to make a decision with enough time left on an inmate's sentence to justify the transfer. In both cases, the Department incurred all the costs to incarcerate the inmates.

⁶⁹ Our analysis assumes that inmates were determined eligible for transfer by the BOP, suitable for transfer by OEO, and that, if OEO approved the transfer, the treaty nation would have consented to the transfer in a timely manner.

⁷⁰ Justice News, Press Release, Attorney General Holder Urges Changes in Federal Sentencing Guidelines To Reserve Harshest Penalties for Most Serious Drug Traffickers, March 13, 2014.

In response to our 2011 report, the Department stated that among the benefits of the treaty transfer program is that the program assists in reducing the size of the large and costly population of foreign nationals in overburdened federal correctional facilities. However, the Department also stated that even if the IPTU increases the number of inmates approved for transfer, cost savings would be contingent upon the approval of the request by the transfer applicant's receiving country. Below, we discuss the Department's efforts to address treaty nation actions which, if improved, could result in cost savings to the Department and assist the BOP in managing its inmate population.

Efforts To Address Factors That Limit the Effectiveness of the Transfer Program

In this status review, we found that prisoner transfer agreements for which the United States is signatory lack enforcement measures that would allow OEO and IPTU officials to address factors that limit the program's effectiveness. Nevertheless, we found that OEO and IPTU officials have tried to address factors that limit the program's effectiveness and have made senior government leaders aware of the obstacles that limit the number of inmates ultimately transferred. For example, OEO and IPTU officials have consistently engaged with their treaty nation counterparts, including those representing Canada and Mexico, in an effort to secure the ultimate transfer of more Department-approved inmates in specific cases and in general. Also, the IPTU annually reports to Congress and describes in detail the difficulties of securing more approvals. In comparison, we found that senior Department leadership has not directly helped to address the factors that are leading to approved inmates not being transferred but has delegated responsibility for doing so to OEO and IPTU officials. We discuss the lack of enforcement measures in transfer agreements, as well as OEO and IPTU efforts to overcome obstacles that limit the program's effectiveness, below.

Lack of Enforcement Measures in Treaty Agreements

There are no enforcement measures within transfer treaties that would allow OEO or IPTU officials to gain treaty nation approval of more Department-approved transfers or to address treaty nations' slow adjudication of transfer requests. A Department of State official told us that a treaty's existence presumes its use and that "enforcement amounts to reciprocity."⁷¹ The official also said that treaties work when both countries get something out of them.

In addition, the IPTU Chief told us that there is no governing body within the multilateral conventions that oversees treaty nations' actions. However, the Council of Europe (COE) Convention on the Transfer of Sentenced Persons has established a process to mediate disputes between member states. While there are no prohibitions to keep the Department of Justice or the Department of State from voicing concerns through such a provision, neither Department has done so,

⁷¹ Reciprocity is a situation or relationship in which two parties agree to do something similar for each other, to allow each other to have the same rights, etc.

according to Department of Justice and State officials we interviewed.⁷² The IPTU Chief said that it is more effective to engage international counterparts individually rather than collectively.

Engaging Treaty Nation Officials

As discussed in our 2011 report, OEO and IPTU officials regularly meet with treaty nation officials from Canada and Mexico to discuss their concerns about Department-approved inmate requests denied by treaty nations and about the timeliness of treaty nations' adjudication of requests. During this review, we found that OEO and IPTU officials' engagement of their treaty nation counterparts has continued but has not resulted in the transfer of more of the inmates whom the Department has approved for transfer.

For example, the IPTU regularly communicates with representatives from the Corrective Services of Canada, the IPTU's point of contact with the Canadian government. However, the IPTU has no regular contact with Canada's Minister of Public Safety. An IPTU attorney told us that since the Minister of Public Safety makes the final decision on transfer requests, neither the IPTU nor the Corrective Services of Canada have "much influence" on securing more transfer approvals from the Canadian government.

In addition to regular communication, the IPTU also has annual bilateral meetings with its counterparts at the Corrective Services of Canada. Most recently, in May 2014, OEO and IPTU officials attended a bilateral meeting with the IPTU's Canadian counterparts. According to the IPTU Chief, the meeting went well; but she does not anticipate a dramatic shift in the number of inmates Canada accepts for transfer.⁷³

OEO and IPTU officials also have annual bilateral meetings with their counterparts in the Mexican government. According to OEO, IPTU, and Department of State officials, the meetings consistently address concerns regarding Mexico's reluctance to accept more of its nationals for transfer, as well as its slow

⁷² In response to a working draft of this report, the Criminal Division stated that the COE Convention provision is rarely used and is intended to resolve a specific transfer case rather than address a generic problem one country might have with multiple countries. Also, it indicated that in late 2013, OEO responded to a COE questionnaire, in which it identified the long decisional time of some of its treaty partners as a problem that results in the expenditure of additional resources, the duration of a prisoner's time in the United States, and, in some cases, ultimately renders transfer impractical.

⁷³ In our 2011 report, we referenced a 2007 report to Congress that stated the increase in the Canadian government's denials may be attributed to changes in the Canadian government. See DOJ, Attorney General, *The Effectiveness of the International Prisoner Transfer Treaties to Which the United States Was a Party in FY 2005 and FY 2006*, Report to the Committees on the Judiciary of the U.S. Senate and House of Representatives (April 2007).

adjudication time and restrictive criteria for suitable candidates.⁷⁴ OEO, IPTU, and Department of State officials also told us that problems with securing more approvals from Mexico are related to the security of Mexico's prisons. Specifically, Mexico has consistently defended its low approval rate as a response to its overcrowded prisons and the need to reject inmates who will threaten prison security. During the course of this status review, the IPTU's Chief told us that Mexico is making progress on building new prisons. But during a May 2014 bilateral meeting with the IPTU's Mexican counterparts, Mexican officials stated that Mexico's new prisons would be used for reasons other than inmate transfers.⁷⁵

Finally, the United States is signatory to two multilateral prisoner transfer conventions, the COE Convention and the Inter-American Convention on Serving Criminal Sentences Abroad.⁷⁶ The signatories to the COE Convention regularly hold meetings where representatives discuss a number of criminal justice matters, including prisoner transfer. The IPTU Chief told us that in 2013, she was invited to chair a panel discussion on prisoner transfer at a meeting of COE representatives but the Department denied her request to attend the meeting due to budget restrictions. The IPTU Chief said COE meetings usually have discussion forums in which concerns can be addressed and that the 2013 meeting would have been an opportunity to further discuss treaty nations' slow adjudication and the number of Department-approved inmates denied by treaty nations.

Annual Reports to Congress

We also found that the OEO and IPTU annually reports to Congress on behalf of the Department and describes many of the factors that limit the program's effectiveness.⁷⁷ For example, the June 2012 report to Congress describes the eligibility restrictions established in the bilateral treaty with Mexico, the low number of Mexican nationals accepted for transfer, and the length of time it takes Mexico to make decisions on requests.⁷⁸ The report also describes changes in Canada that affect the program. For example, the June 2013 report to Congress states: "Historically, Canada has been an extremely active participant in transfer process

⁷⁴ These concerns are also expressed during working group meetings between IPTU officials and staff and Mexican embassy staff in Washington, D.C. Working group meetings occur twice a year and are generally intended to discuss procedures for the physical transfer of inmates.

⁷⁵ In its June 2012 report to Congress, the Department stated that it continues to argue that a very modest increase in Mexican transfers — 100 to 200 additional inmates — could be accommodated in the Mexican correctional system and would not constitute a significant or dangerous burden on Mexican prisons. See DOJ, Attorney General, *The Effectiveness of the International Prisoner Transfer Treaties to Which the United States Was a Party in FY 2011*, Report to the Committees on the Judiciary of the United States Senate and House of Representatives (June 2012).

⁷⁶ See Appendix 1 for more information.

⁷⁷ Annual reports to Congress also describe the program's history, management overview, statistics, and descriptions of prisoner transfer relationships with treaty partners.

⁷⁸ DOJ, Attorney General, *The Effectiveness of the International Prisoner Transfer Treaties to Which the United States Was a Party in FY 2011*, Report to the Committees on the Judiciary of the United States Senate and House of Representatives (June 2012).

and has accepted most of its nationals for transfer. However, a political change in the Government has resulted in Canada approving fewer of its nationals for transfer and a significant increase in processing time.”⁷⁹ Finally, we found that annual reports to Congress describe difficulties in securing more transfers from additional treaty partners. For example, the 2013 report to Congress states that the transfer process has not functioned well with countries such as Guatemala and Honduras for various economic, political, and governmental issues. In FY 2012, Honduras had not made any decisions on 37 requests for transfer approved by the Department.

Department Leadership

While OEO and IPTU officials consistently engage treaty partners and annually report to Congress on the difficulties of securing more transfers and timely request adjudications, senior Department leadership has not directly assisted the IPTU and the OEO with these issues. The IPTU Chief told us that she has not been involved in a meeting with senior Department leadership with a goal to address obstacles to securing more transfers. In addition, a Department of State official told us that while OEO and IPTU officials “constantly raise the issue” of securing more approvals with Mexico and push to get more information on the status of pending cases, they have not seen the issue of securing more approvals raised in the Department at a level higher than the Mexican Working Group.⁸⁰ The Deputy Assistant Attorney General for the Criminal Division told us that he has had infrequent meetings with foreign national delegations to discuss the treaty transfer program and is notified only when high-profile inmates are transferred. He added that the transfer of more inmates is an issue within the purview of the OEO Director, which he described as a significant, career Senior Executive Service position.⁸¹

Several Department of Justice and State officials told us that efforts to improve the effectiveness of the transfer program will require additional effort from senior Department of Justice leadership. For example, the OEO Director told us that many changes have been made within the Department since the OIG’s 2011 report and that the next step is to develop a strategic engagement with transfer partners, including the treaty nations, the Department of State, and the Department itself, to determine where the most progress can be made to secure more transfers. The OEO Deputy Director told us that it may be worthwhile to be

⁷⁹ DOJ, Attorney General, *The Effectiveness of the International Prisoner Transfer Treaties to Which the United States Was a Party in FY 2012*, Report to the Committees on the Judiciary of the United States Senate and House of Representatives (June 2013).

⁸⁰ The IPTU Chief told us that Mexican Working Group meetings are held with Mexican Embassy attachés and “key players” involved in the transfer process. Department representatives include the IPTU Chief, Deputy Chief, and attorneys and paralegals who have a particular role in the transfer of Mexican national inmates to Mexico.

⁸¹ The Deputy Assistant Attorney General was appointed on December 7, 2012. Prior to his appointment, he served in an acting capacity and as OEO Director. While in his role as the OEO Director, he told us that he was responsible for all interaction with senior officials in the Mexican and Canadian governments.

more proactive with treaty partners that have the biggest impact on the Department, including working more closely with the Department of State and transfer partners. The IPTU Chief said that the Department needs to create more incentives for treaty nations to accept transfers: "You've got to think of that carrot that would get [treaty nations] more involved." She added that it would be helpful for "higher-ups" in the Department to talk to their counterparts in the Mexican government and determine whether there is something that Mexico wants in return. Finally, a Department of State official said that if the United States signs a treaty, the government will take action and expects treaty partners to do the same. The official said there are several ways for the United States to convey concerns that another country is not fulfilling its treaty obligations, such as undertaking a systematic review of waiting times for transfer decisions and discussing the results with the appropriate officials.

CONCLUSION AND RECOMMENDATIONS

Conclusion

The Department has taken a number of steps to improve the management of the treaty transfer program, including ensuring that inmates fully understand the program and that the Department considers transfer requests consistently. We believe these steps may have contributed to the increase in the number of applications received and approved by the Department from FY 2011 through FY 2013. However, a second revised BOP program statement, cooperatively developed between the BOP and the IPTU, to ensure BOP case managers have accurate and complete information for determining an inmate's eligibility for transfer consideration was not implemented until over 3 years after the issuance of our 2011 report. This means that the program has continued to operate during the intervening period under the prior, flawed program statement.

In our 2011 report, we stated that increasing the number of foreign national inmates transferred from BOP custody to serve the remainder of their sentence in their home countries would result in cost savings to the Department. As part of this review, we found that increasing the number of foreign nationals transferred could particularly help alleviate overcrowding in contract prisons. However, even if the IPTU increases the number of inmates approved for transfer, any cost savings or reduction in the prison population is contingent upon the treaty nations' approving requests and that approval is not always forthcoming. We found that from FY 2011 through FY 2013, due to treaty nations' reluctance to accept for transfer or make a timely decision on those inmates the Department had approved, the Department incurred \$26 million in incarceration costs for over 900 inmates. We concluded that the BOP could incur potential cost savings from the transfer of inmates housed in BOP contract prisons. For example, our analysis revealed that, if only 1 percent (204) of the inmates incarcerated in contract institutions applied and were transferred to serve their sentences in their home countries, the BOP could potentially save \$4.5 million in annual incarceration costs.

The Department has recently begun to implement initiatives, including Smart on Crime, intended in part to reduce incarceration costs and help alleviate prison overcrowding. We believe the Department can do more to utilize the existing treaty transfer program to achieve the same benefits. For example, and most important, Department leadership should address factors that continue to limit the effectiveness of the treaty transfer program. As part of this effort, Department leadership should consider whether other steps are necessary to further inform eligible but uninterested inmates about the benefits of the program, and what, if anything, the Department can do to address the reasons eligible inmates are not interested in transfer. Department leadership should also consider providing the IPTU with appropriate resources to review transfer applications and pursue how to further improve the program's effectiveness. Finally, working with the treaty transfer partners, including the Department of State and foreign national

representatives, Department leadership should develop and support a strategy to increase the number of foreign national inmates ultimately transferred.

Recommendations

To further improve the management of the treaty transfer program, the BOP and the Criminal Division (the IPTU) should:

1. Regularly exchange, and reconcile as necessary, data on foreign national transfer requests: those determined eligible, approved, denied, and ultimately transferred from Bureau of Prisons custody.
2. Consider whether other steps are necessary to further inform eligible but uninterested inmates about the benefits of the treaty transfer program and what, if anything, the Department can do to address the reasons eligible inmates are not interested in transfer.

To improve the effectiveness of the treaty transfer program, including the consideration of more foreign national inmates for transfer, the Criminal Division should:

3. Monitor staffing levels at the International Prisoner Transfer Unit and consider whether its resources are appropriate to enable them to timely review transfer applications.
4. Review the data to determine why more eligible inmates are not approved for transfer, and consider whether further revisions to the International Prisoner Transfer Unit's guidelines or other steps would facilitate such approvals.

To further improve the effectiveness of the treaty transfer program, including the ultimate transfer of more Department-approved foreign national inmates, the Office of the Deputy Attorney General should:

5. Actively support a high-level working group with its treaty transfer partners, including the Department of State, and bilateral meetings with foreign national representatives, when necessary, to develop and support a strategy to facilitate the transfer of more foreign national inmates from Bureau of Prisons custody.

INTERNATIONAL TREATIES AND TRANSFER REQUIREMENTS GOVERNING TREATY TRANSFER

International prisoner transfers were established through treaties that govern the legal requirements for transferring foreign national inmates to their home countries to serve the remainder of their sentences. This appendix briefly describes those treaties, the related U.S. laws and regulations, and Department policy regarding treaty transfer.

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 U.S. citizen jailed in Mexico could, with his consent, return to the United States to serve the remainder of his sentence.⁸²

Council of Europe Convention on the Transfer of Sentenced Persons

The United States acceded to participate in the Council of Europe (COE) in 1983, and the COE Convention was entered into force on July 1, 1985. It was the first of the multilateral 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.⁸³ The Convention's primary purpose is to facilitate the social rehabilitation of inmates, as well as to consider humanitarian reasons for transfer. The COE Convention also recognized that language barriers and the lack of contact with relatives may prove detrimental to the inmate; thus, the council determined that inmates would be best served by being incarcerated in their own society.

⁸² The consent of Mexico and the United States is also essential.

⁸³ COE Convention countries include: Albania, Andorra, Armenia, Australia, Austria, Azerbaijan, Bahamas, Belgium, Bolivia, Bosnia and Herzegovina, Bulgaria, Canada, Chile, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, Estonia, Finland, France, Georgia, Germany, Greece, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, the former Yugoslav Republic of Macedonia, Malta, Mauritius, Mexico, Moldova, Montenegro, Netherlands, Norway, Panama, Poland, Portugal, Romania, Russia, San Marino, Serbia, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, Tonga, Trinidad and Tobago, Turkey, Ukraine, United Kingdom, and Venezuela. Source: <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=112&CM=8&DF=&CL=ENG> (accessed May 14, 2015).

Inter-American Convention on Serving Criminal Sentences Abroad

The Organization of American States (OAS) Convention was adopted on April 12, 1996, and “entered into force” for the United States on May 25, 2001.⁸⁴ 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 17 countries.⁸⁵

Treaty Transfer Requirements

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

- The inmate must have been 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 domiciliary of the sentencing state, or are serving a life sentence.⁸⁶ In addition:

⁸⁴ Inter-American Convention, <http://www.oas.org/juridico/english/sigs/a-57.html> (accessed May 24, 2015).

⁸⁵ OAS Convention countries include: Argentina, Belize, Brazil, Canada, Chile, Costa Rica, Czech Republic, Ecuador, El Salvador, Guatemala, India, Kingdom of Saudi Arabia, Mexico, Nicaragua, Panama, Paraguay, Uruguay, and Venezuela. Source: <http://www.oas.org/juridico/english/sigs/a-57.html> (accessed July 1, 2015).

⁸⁶ Article IX(4) of the bilateral treaty between the United States and Mexico states, “A ‘domiciliary’ means a person who has been present in the territory of one of the parties for at least five years with intent to remain permanently therein.”

APPENDIX 1

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

U.S. Laws and Regulations 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 are brief descriptions of those provisions and related Department component policy.

Federal Statutes and Regulations

18 U.S.C. §§ 4100 – 4115

Congress passed Public Law 95-144 giving the Attorney General the authority to act on behalf of the United States to oversee the administration of the treaty transfer program; the President signed it on October 28, 1977. The law establishes the framework and requirements for the treaty transfer program. The provisions of these sections apply only 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 receiving country and 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 inmates.⁸⁷ The section allows a federal inmate to collaterally attack his or her conviction by filing a motion rather than a habeas petition in the district in which he/she was convicted and sentenced rather than in the district of confinement.

⁸⁷ 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.

28 C.F.R. § 0.96b

In 1977, the BOP Director and his or her designees were authorized to receive custody of inmates and to transfer inmates to and from the United States under a treaty as referred to in 18 U.S.C. §§ 4100 – 4115.

28 C.F.R. §§ 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 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 the Office of Enforcement Operations (OEO). The Assistant Director is also responsible for notifying an inmate as to whether the OEO has decided in favor of or against the inmate's request to transfer. Finally, if a request is approved, the Assistant Director will arrange for the inmate to have a consent verification hearing, take the inmate to a departure institution, and transfer the inmate to authorities from the inmate's country of nationality.⁸⁸

28 C.F.R. § 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 18 U.S.C. §§ 4100 – 4115 is appropriate or inappropriate. The Assistant Attorney General of the Criminal Division has delegated his authority to the Deputy Assistant Attorney General for the Criminal Division, the Director of the OEO, and the Associate Directors of the OEO.

Department Component Policy

BOP Program Statement 5140.40

The BOP's program statement, last revised on August 4, 2011, 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.⁸⁹ The program statement also states the program's objectives, including:

⁸⁸ The BOP and the Criminal Division are both involved with the consent verification hearing process at various stages.

⁸⁹ On April 10, 2015, the BOP issued program statement 5140.42, Transfer of Offenders To or From Foreign Countries, which rescinded program statement 5140.40 of the same name. Program statement 5140.42 includes the following summary of changes: 1) modifies Form BP-A0297, Transfer
(Cont'd.)

APPENDIX 1

- 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 be transferred only after receiving permission from the court.
- 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 the IPTU within 10 days.

IPTU Guidelines for the Evaluation of Transfer Applications of Federal Inmates

The treaty transfer program has no formal regulations that govern the considerations applied to inmate transfer requests. The IPTU has guidelines, implemented in February 2003, for evaluating whether the inmate requesting treaty transfer is a suitable candidate. These guidelines set forth a number of suitability factors, such as the likelihood of social rehabilitation, law enforcement concerns, and the risk that the inmate will return to the United States. The IPTU's guidelines state that to determine the likelihood of social rehabilitation, the IPTU evaluates an inmate's acceptance of responsibility for the offense, criminal history, seriousness of the offense, criminal ties within the sending and receiving countries, family and social ties to the sending or receiving country, whether the inmate is a citizen of a treaty country, humanitarian concerns, and the 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, the IPTU considers the seriousness of the inmate's offense, public sensibilities, public policy, possible sentencing disparity, and law enforcement or prosecutorial needs. Finally, the IPTU evaluates the risk that the inmate would return to the United States because the IPTU will allow an inmate to serve his sentence in his own country only if he or she will stay there after release. To determine the risk that the inmate will return to the United States, the IPTU evaluates existing ties to the United States, any previous inmate transfer, and previous deportations or illegal reentries.

Inquiry, to include a list of possible ineligible criteria and requires a review and signature of the Unit Manager; 2) provides that inmates with pending appeals or collateral attacks for the underlying criminal judgment or sentence may not apply for transfer; 3) provides clarification regarding dual citizenship, committed fines, and cases with detainers or pending charges; and 4) provides that the OEO will inform inmates who are not appropriate for treaty transfer by letter indicating the reasons for denial. While we briefly discuss in this report how revisions incorporated in program statement 5140.42 address errors we previously identified and may help improve the accuracy of eligibility determinations, program statement 5140.40 was utilized by the BOP at the time of our fieldwork.

THE DEPARTMENT'S RESPONSE TO RECOMMENDATIONS THE OIG MADE IN ITS 2011 REPORT

In our 2011 report, we made 14 recommendations to the BOP, the Criminal Division (IPTU), and the Executive Office for U.S. Attorneys (EOUSA) to help the Department more effectively manage the treaty transfer program.⁹⁰ This appendix, based on subsequent status reports provided to the OIG, describes the Department's response to those recommendations. We made several of the recommendations to multiple components. In those cases, we provide each component's response to the recommendation and identify whether each component's role in response to the recommendation is "Resolved" or "Closed." In those instances where a component's role is "Resolved," the recommendation remains open until the OIG determines that the component has fulfilled its role for the recommendation.

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

BOP Response: The BOP provided the OIG with screenshots of its internal Intranet indicating that the treaty transfer program statement was translated into all languages associated with the treaty transfer program.

Status: Closed.

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

BOP Response: The BOP stated that Program Statement 5140.40, Transfer of Offenders to or from Foreign Countries, August 4, 2011, directs case managers to discuss the transfer program at the inmate's initial classification and at every subsequent program review.⁹¹ 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.

Status: Closed.

Recommendation 3: The BOP and the 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.

⁹⁰ The OEO responded to the OIG's recommendations on behalf of the IPTU.

⁹¹ BOP, Program Statement 5140.40 (August 4, 2011), was implemented during the fieldwork for our 2011 report.

APPENDIX 2

BOP Response: The BOP coordinated with the IPTU to ensure the program statement accurately reflects eligibility criteria based on treaty requirements and IPTU considerations. The BOP 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. However, in subsequent status reports, the BOP stated that changes to the program statement required significant revisions to the Code of Federal Regulations and that the BOP's Office of General Counsel prepared proposed rule changes for Department review. The BOP stated that the Department had approved the final rule document. Before publishing the final rule, the Office of General Counsel forwarded the program statement to the BOP's executive staff and the union to determine whether to pursue national negotiations or work through a Joint Policy Committee (JPC). Once union had reviewed the program statement, either through negotiations or the JPC, the BOP would publish the final rule and program statement. In March 2015, the BOP reported that during the week of January 26, 2015, the BOP successfully negotiated the program statement with the union after the BOP's executive staff had determined the program statement would be negotiated with the union rather than be reviewed through the JPC. The BOP Director signed the revised program statement, and it was issued on April 10, 2015.

Status as to the BOP: Closed.

OEO Response: The OEO provided the OIG with a copy of the OEO's proposed revisions to the BOP's program statement. The OEO stated that representatives from the Criminal Division and the BOP met to discuss the OEO's revisions, the OIG's concerns, and to ensure that the proposed revisions addressed the areas noted by the OIG. The OEO's suggested revisions to the BOP's program statement included: (1) the special requirements of the Mexican transfer treaty and who is responsible for evaluating their application to an inmate's transfer request; (2) clarification of the differences between a fine and a committed fine and the circumstances in which those differences affect a determination of transfer eligibility; and (3) how BOP case managers should assess whether exceptional circumstances exist that would preclude the requirement that a treaty-specific period of time remain to be served on a sentence.

Status as to IPTU: Closed.

Recommendation 4: The BOP ensure that all staff involved in treaty transfer determinations are properly trained.

BOP Response: The BOP provided staff involved in transfer eligibility determinations with refresher training that focused on educating staff on the eligibility criteria for treaty transfer determinations. The BOP provided the OIG with copies of lesson plans and other training materials it will use to educate staff on treaty transfer. In subsequent status reports, the BOP stated that all staff involved in treaty transfer determinations will be provided training on policy changes made in response to Recommendation 3 once the revised program statement is

APPENDIX 2

negotiated with the union and issued to the field. The revised program statement was issued in April 2015. The BOP subsequently reported that it anticipates developing training by the end of June 2015. When the training is ready, all staff involved in treaty transfer determinations will be required to complete it.

Status: Resolved.

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

BOP Response: The BOP amended Program Statement 5140.40, August 4, 2011, to include a process for supervisors to review eligibility determinations made by unit management staff. The BOP also revised the Transfer Inquiry and Review Form (BP-A0297), which requires a supervisory review and signature on case managers' eligibility determinations. In subsequent status reports, the BOP stated that the revised program statement described in the BOP's response to Recommendation 3 reflects the new requirement for supervisors to review eligibility determinations. The revised program statement and revised transfer inquiry form would be issued to the field after each is reviewed by the union either through negotiations or the JPC. In March 2015, the BOP reported that during the week of January 26, 2015, the program statement was successfully negotiated with the union after the BOP's executive staff determined the program statement would be negotiated with the union rather than be reviewed through the JPC. The BOP Director signed the revised program statement, which the BOP implemented on April 10, 2015. The BOP also issued the revised transfer inquiry form on that date.

Status: Closed.

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.

BOP Response: The BOP coordinated with the IPTU to ensure the program statement accurately reflects the process by which an inmate can obtain more information from the IPTU regarding the reasons for denial. The BOP provided Program Statement 5140.40, August 4, 2011, to the IPTU for its review and recommendations. The BOP stated that the IPTU's proposed revisions were incorporated into the second revised program statement issued on April 10, 2015.

Status as to BOP: Closed.

OEO Response: The OEO provided the OIG a copy of the OEO's proposed revisions to the BOP's program statement and stated that representatives from the Criminal Division and the BOP met to discuss OEO's revisions, the OIG's concerns, and to ensure that the proposed revisions addressed the areas the OIG had noted. The OEO's suggested revisions to the BOP's program statement included improvements to the description of the transfer program's decisional process, expansion of the explanation concerning how the transfer decision is communicated

APPENDIX 2

to the prisoner, discussion of the process and requirements for seeking reconsideration and re-application, and discussion of the ability to request additional information from OEO about a transfer determination.

Status as to IPTU: Closed.

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 an inmate can do to become a better candidate for transfer, if applicable.

OEO Response: The IPTU deleted from denial letters the sentence that states, "The 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." The IPTU also added the following language to its denial letters:

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 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.

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

Status: 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.

OEO Response: The IPTU implemented a computerized notification system to ensure that timely follow-up occurs and developed a spreadsheet to track and monitor cases. The OEO provided the OIG with copies of both.

Status: Closed.

Recommendation 9: Work with the 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.

EOUSA Response: The EOUSA worked with the IPTU to update information available to the U.S. Attorney's Offices (USAO) about the treaty transfer program. EOUSA provided the OIG with copies of revised sections of the United States

APPENDIX 2

Attorneys' Manual (USAM) and updated portions of the Criminal Resource Manual. EOUSA also provided a memorandum from the Criminal Division's Assistant Attorney General to all United States Attorneys and Heads of the Department's litigating components. EOUSA sent the memorandum to ensure USAOs and Department litigating components are familiar with the treaty transfer program, to provide updates on the program, to address areas where assistance is needed, and to seek continued participation and cooperation in the administration of the program. In addition, EOUSA provided a memorandum from the EOUSA Director to all United States Attorneys, First Assistant United States Attorneys, and Criminal Chiefs on the revised sections of the USAM, updated portions of the Criminal Resource Manual, and the issuance of the Criminal Division's Assistant Attorney General's memorandum. EOUSA stated that all materials provided to the OIG are available to all USAOs on the EOUSA Intranet.⁹²

Status: Closed.

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.

EOUSA Response: EOUSA provided the OIG with a copy of revisions to Section 740 of the Criminal Resource Manual, which provides sample plea language clarifying that the USAOs can agree to recommend or not to oppose a transfer request. The language also makes it clear that the determination rests with the IPTU and that the USAO concession in the plea agreement does not bind the IPTU. EOUSA stated that the sample plea language was highlighted in the EOUSA Director's memorandum to USAOs that EOUSA provided the OIG in response to Recommendation 9.

Status: Closed.

Recommendation 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.

EOUSA Response: EOUSA provided copies of letters to the Federal Public Defender and Federal Probation Office that EOUSA created in consultation with the IPTU. EOUSA stated that the IPTU determined that the most effective means of ensuring that inmates were aware of the treaty transfer program was to direct letters explaining the program to the Federal Public Defender and Federal Probation Office, which provide legal representation and prepare pre-sentencing

⁹² The OEO also responded to Recommendation 9. The OEO reiterated actions reported by EOUSA to the OIG and reported that senior members of the IPTU prepared a videotape about the operation of the transfer program to be used as internal training in the IPTU, as well as training for USAOs and Department attorneys.

APPENDIX 2

investigations, respectively, in each judicial district. The letters asked that the recipients inform foreign national defendants about the existence of the program and the procedures for applying for transfer. EOUSA provided input to the IPTU on the text of the letters that the IPTU distributed to every judicial district.⁹³

Status: Closed.

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.

BOP Response: The BOP provided the OIG copies of the revised Program Review Guidelines for Correctional Programs and a Correctional Programs Program Review Report using the revised guidelines. The BOP implemented revised Program Review Guidelines to determine whether transfer application packets have been completed on time, the decisions regarding program eligibility were made correctly, and inmates were informed and notified about the transfer program during initial classification and subsequent unit management reviews.⁹⁴

According to the BOP, from FY 2011 through FY 2013 deficiencies related to the treaty transfer program based on its revised program review guidelines were found in 10 of 106 (9 percent) institution program reviews. Specifically, the BOP found no deficiencies during 31 institution program reviews in FY 2011.⁹⁵ In FY 2012, the BOP conducted 35 institution program reviews and found only 1 deficiency related to the timely processing of transfer application packets. Finally, in FY 2013, the BOP found 9 deficiencies in the course of 40 institution program reviews. Of these 9 deficiencies:

- one was related to the timely completion of application packets;
- three were related to staff making correct decisions on program eligibility; and

⁹³ The OEO also responded to Recommendation 11. The OEO reiterated actions EOUSA had reported to the OIG. Letters explaining the transfer program request that both Federal Public Defenders and Probation Officers tell foreign national defendants about the transfer program when representing the defendant and preparing the pre-sentencing investigation, respectively. This being done before a defendant reaches his or her designated place of confinement would give the defendant notice at a much earlier date to seek information about the transfer program and the transfer application process.

⁹⁴ The BOP stated that staff decisions on program eligibility were made correctly, and whether inmates were informed and notified about the transfer program during initial classification and subsequent program reviews, are closely related. For example, staff could classify an inmate in SENTRY as ineligible and, as a result, the inmate would not be informed and notified about the treaty transfer program during initial classification and subsequent review.

⁹⁵ The revised guidelines were published on June 3, 2011.

APPENDIX 2

- five were related to informing and notifying inmates about the transfer program during initial classification and subsequent program reviews.

According to the BOP, corrective actions were taken in response to the deficiencies found during program reviews. For the deficiency found in FY 2012, the institution conducted monthly rosters to ensure treaty transfer packets were completed and mailed within the required timeframes and completed a monthly memorandum certifying the timeliness of mailing treaty transfer packets. In addition, corrective actions taken in response to deficiencies found in FY 2013 included:

- completing monthly rosters to identify and monitor treaty transfer classification,
- developing and using a treaty transfer classification checklist,
- conducting quarterly treaty transfer classification audits,
- conducting treaty transfer training,
- completing staff certification memorandums to ensure inmates are notified of the treaty transfer program,
- conducting perpetual audits to ensure inmates are notified of the treaty transfer program, and
- managing tracking of individual cases to ensure timely mailing of treaty transfer consideration requests.

A BOP official told us that the Central Office is notified when a program review identifies an institution with deficiencies related to the treaty transfer program. He stated that if a program review finds a deficiency related to the treaty transfer program, it is communicated to Central Office officials while program review staff is at the institution. He also said that BOP officials will receive a copy of the report identifying the deficiencies found and the determined corrective actions.

Status: Closed.

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.

OEO Response: The OEO provided documentation of the establishment of formal timeliness standards and of the implementation of a system to track IPTU analysts' evaluation of application packets. Specifically, the OEO provided the OIG a screen shot of its system to track IPTU staff's evaluation of application packets pending in the IPTU for 90 days or longer. The system included a list of IPTU staff,

APPENDIX 2

the case and name, the number of days pending, and a history of the case, including reasons for a delay.

Status: 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.

OEO Response: The OEO provided copies of revised information requests to USAOs and many law enforcement agencies, including the Bureau of Alcohol, Tobacco, Firearms 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."⁹⁶

Status: Closed.

⁹⁶ In response to a working draft of this report, the Criminal Division stated that IPTU instructs prosecutors and law enforcement agencies to respond to its inquiries within 14 not 21 days. Although the early drafts of these documents used the 21-day response period, it was decided later that 14 days was a reasonable period for response and could contribute to a faster overall processing time.

METHODOLOGY OF THE OIG STATUS REVIEW

For this status report, 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; and BOP and IPTU policies, procedures, and guidelines. We also analyzed BOP and IPTU data on the number of applications forwarded by the BOP to the IPTU for transfer consideration and the number of inmates ultimately transferred. Finally, we interviewed Department officials with the BOP and the Criminal Division, as well as officials with the Department of State. Below, we provide additional information related to the methodology of our review.

Data Analysis

Applications and Transfers

To determine the number of applications the IPTU received from the BOP and the number of inmates ultimately transferred, we analyzed BOP and IPTU data on applications and transferred inmates from FY 2011 through FY 2013. We requested BOP data on all applications forwarded to the IPTU for each fiscal year and IPTU data on all applications received from the BOP over the same period. We compared the data provided by the BOP and the IPTU and found a number of discrepancies between the datasets. We provided these discrepancies to the BOP and the IPTU and requested that each component clarify the reasons for each discrepancy. The reasons for discrepancies between BOP and IPTU data include:

- Not all re-applications were included in BOP data.
- There were keying errors (since corrected) in the BOP's data system that prevented inmates' names from appearing on BOP reports on the number of applications.⁹⁷
- The BOP and the IPTU counted inmates in different fiscal years.
- IPTU data on inmate applications included re-applications the Canadian government submitted directly to the IPTU and therefore not included in the BOP's data.⁹⁸

⁹⁷ When we requested clarification for applications reported by the OEO but not included in BOP application data, the BOP responded: "There are no indications from BOP regarding how these inmate's applications were submitted to OEO. The easiest explanation would be that they were not logged into BOP's database, but the fact that SENTRY indicates they have the (Case Management Activity) assignment(s) of 'Treaty Transfer Ineligible' or 'Treaty Transfer Not Interested' is perplexing."

⁹⁸ Canadian inmates must complete a "Request for Transfer to Canada" form and the "Information form in support of a request for transfer to Canada" to the Canadian government.

APPENDIX 3

Similarly, we analyzed BOP and IPTU data on the number of transferred inmates from FY 2011 through FY 2013. We compared BOP and IPTU data and found discrepancies between the datasets. We provided these discrepancies to the BOP and the IPTU and requested that each clarify the reasons for each. In some cases, the BOP later confirmed that inmates included in the IPTU's data but not in the BOP's data actually had been transferred through the program. Additional reasons for discrepancies between BOP and IPTU data include:

- An inmate identified as transferred actually withdrew the request and was not transferred.
- Inmates identified as transferred were actually released to Immigration and Customs Enforcement while their treaty transfer requests were pending treaty nation approval.
- Incorrect release codes entered into the BOP's SENTRY database resulted in inmates being omitted from data provided to the OIG.

We found other discrepancies between BOP and IPTU data that did not affect our analysis. For example, we found instances in which the BOP's data indicated that transferred inmates were citizens of countries that were not treaty nations or that an inmate was transferred to the United States.⁹⁹ The IPTU later clarified the citizenship of these inmates and confirmed that they were ultimately transferred back to treaty nations. Finally, BOP and IPTU data contained different names for the same transferred inmate. We were able to verify that each dataset listed the same person using other identifiable information, including the inmate's BOP number.

Incarceration Costs

To determine the costs the Department incurred to incarcerate foreign national inmates, we used BOP and IPTU data. The BOP provided cost estimates on daily and annual costs for its institutions from FY 2005 to FY 2013. The IPTU provided the specific dates for which each inmate's application was pending a treaty nation decision, denied, or withdrawn.

To calculate the cost of inmates denied transfer, we used the IPTU's approval date and treaty nation denial date to determine the duration of time in between. From those dates, we calculated the number of days a prisoner was incarcerated during each fiscal year ("fiscal days"). Using BOP cost data and IPTU dates, we determined how much each inmate cost the Department to remain in BOP custody.

⁹⁹ BOP Central Office officials told us that to eliminate confusion the BOP's SENTRY database has been revised to remove countries with which the United States has no prisoner transfer agreement.

APPENDIX 3

By the same method we calculated the costs for inmates whose applications were withdrawn or still pending a treaty nation decision. For cases withdrawn, the fiscal days amounted to the time from the IPTU approving a case until the date of application withdrawal. For cases pending adjudication, the fiscal days amounted to the time the IPTU approved transfer until the time an inmate was released, deceased, or the OIG received the data (February 2014). In the instances where the duration extended to FY 2014, we applied the cost estimates for FY 2013. We were unable to account for inmate transfers to a higher or lower security institution during the course of our review.

Interviews

We interviewed BOP Central Office officials and staff, including the Administrator, Assistant Administrator, and Senior Correctional Program Specialist for the Correctional Programs Division; the Deputy General Counsel; the Chief of Policy and Information Management; and the Acting Chief of the Labor Relations Office. We also re-interviewed eight case managers we randomly selected from those we interviewed at institutions we visited during our 2011 review. At the Criminal Division, we interviewed the Deputy Assistant Attorney General, the OEO Director and Deputy Director, and the IPTU Chief and Deputy Chief. We also re-interviewed six IPTU analysts we interviewed during our 2011 review. At the Department of State, we interviewed the Director and an Attorney Advisor with the Office of Legal Affairs, Overseas Citizens Services, Bureau of Consular Affairs.

THE DEPARTMENT'S RESPONSE TO THE DRAFT REPORT



U.S. Department of Justice

Criminal Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MEMORANDUM

August 7, 2015

To: Michael E. Horowitz
Inspector General
U.S. Department of Justice

Through: James A. Tyrell
Deputy Assistant Inspector General
Evaluation and Inspections Division

From: Paul M. O'Brien *(POB)*
Deputy Assistant Attorney General

Subject: Response to the Office of the Inspector General Status Report Reviewing the Department's International Prisoner Transfer Program

The Department appreciates the opportunity to address the recommendations and findings contained in the Office of the Inspector General (OIG) Status Report on the Department's International Prisoner Transfer Program ("transfer program"). As acknowledged in the Status Report, since the OIG's initial review of the transfer program in 2011, the Department has expended considerable effort and made significant progress to successfully address previous concerns raised by the OIG. The OIG further recognized that while the Department "has taken a number of steps to increase the number of applications and improve the management of the treaty transfer program, factors largely outside the Department's direct control continue to significantly limit the number of foreign national inmates . . . ultimately transferred." (Status Report at 25).

As the Status Report expressly acknowledges, "[t]he voluntary nature of the transfer program, the lack of treaty agreements with all foreign countries represented by the foreign national inmate population in BOP custody, and restrictive criteria imposed by treaty nations significantly limit the number of foreign national inmates eligible for transfer consideration." (Status Report at 5). The Department remains concerned, however, with the OIG's continued emphasis on the notion that less than one percent of inmates from treaty countries are ultimately transferred. This conclusion is distorted as it disregards the fact that a significant percentage of foreign national inmates are ineligible for transfer based on treaty or statutory restrictions, or, even if eligible, choose not to seek transfer. In addition, as discussed further below, even those inmates who are determined to be statutorily eligible to participate in the transfer program may not be suitable for transfer. When these constraints are properly taken into account, the Department's overall transfer rate was actually 17 percent of eligible and interested inmates in FY 2013. (Status Report at 11). Moreover, it should be noted that based on our records, the Department's overall approval rate of applications by eligible, interested inmates processed in FY 2013 was 36 percent, but approximately half of these inmates were not ultimately transferred for reasons beyond the Department's control.

The Department Has Made Significant Enhancements to the Administration of the International Prisoner Transfer Program in Response to Previous OIG Recommendations

In its Status Report, the OIG detailed the many actions that the Department has taken to improve the administration of the transfer program, including successfully closing 13 of the 14 OIG recommendations issued in 2011. As the OIG notes, “it appears that changes the Department has made to the management of the treaty transfer program since our last review have contributed to an increase in the number of inmates requesting and being found suitable for transfer.” (Status Report at ii). BOP has improved its communication about the transfer program, increased awareness, and provided further meaningful opportunities to apply for transfer. For example, BOP has included the transfer program as part of prisoner orientation and emphasized it in subsequent program reviews with the prisoner’s case manager, as well as translating all treaty-related documents into the language of treaty nations. Likewise, the Department’s International Prisoner Transfer Unit has taken a number of steps to ensure uniformity in making suitability determinations, to encourage a forward-leaning view towards transfer, to expedite processing of cases, and to provide for reconsideration of decisions. As the Status Report acknowledges, these steps “represent a meaningful effort to improve and to ensure the consistent application of suitability guidelines.” (Status Report at 20).

The Purpose of the Treaty Program

In both the 2011 OIG report and the current Status Report, the OIG has described the transfer program as a mechanism to reduce prison costs and alleviate prison overcrowding and has criticized the Department for not making more effective use of the program. Although the Department agrees that ancillary benefits of the program include potential cost savings and reduction in prison overcrowding, these were not the reasons why Congress originally authorized the transfer program. The transfer program was established in 1977, pursuant to Congressional enabling legislation codified at 18 USC §§ 4100 *et seq.* Congress articulated three legislative purposes underlying the creation of the transfer program: first, to facilitate rehabilitation of offenders; second, to improve bilateral relations between transfer nations; and third, to encourage humanitarian treatment of prisoners.¹ At the time of the bill’s passage, legislators were primarily concerned about securing the return of Americans incarcerated in poor conditions in foreign prisons. Although the transfer of foreign national prisoners has had a modest, incremental impact on U.S. prison costs, the transfer program was never envisioned as a means to significantly reduce the population of inmates in U.S. prisons.

The Status Report suggests that the Department has the means to significantly increase the number of prisoners transferred from the United States each year but is not making full use of the transfer program because only a small number of foreign nationals are actually transferred each year. The Status Report reaches this conclusion by measuring the actual number of transfers that occur against the total foreign national inmate population from treaty nations – roughly over 40,000 prisoners. That calculation, however, ignores the fact that the overwhelming majority of those inmates are ineligible based on statute or treaty, uninterested in transfer, or unsuitable for transfer. Furthermore, even those inmates who are approved for transfer by the Department may still have their applications denied or not acted upon by their home country, further reducing the final number of transfers that actually occur.

¹ H.R. REP. NO. 95-720, at 26 (1977), reprinted in 1977 U.S.C.C.A.N. 3146, 3148–49.

Many Inmates from Treaty Countries are Ineligible for Transfer Based on Statutory or Treaty-Based Restrictions

A significant number of inmates are prohibited from participating in the transfer program due to either statutory or treaty-based restrictions. For example, Mexican nationals who have been convicted solely of immigration crimes or who are serving life sentences are excluded from transfer by the United States' bilateral treaty with Mexico. Because the majority of foreign national prisoners in federal prisons are Mexican nationals and many of these offenders were convicted of immigration offenses, this treaty requirement substantially reduces the pool of eligible transfer candidates. In FY 2013, a large proportion of the 22,700 foreign nationals that BOP found ineligible for transfer were Mexican nationals convicted of immigration offenses and, as the Status Report notes, this factor alone likely accounted for a significant portion of the total number of ineligible transfer candidates. (Status Report at 17). Other restrictions bar prisoners with less than six months remaining on their sentence, or with a pending appeal, from transferring.

Many Inmates From Treaty Countries Do Not Want to Transfer

The transfer program is voluntary and requires the consent of the prisoner, the sentencing country, and the administering country. Thus, neither a prisoner nor a receiving country can be compelled to proceed with a transfer even if the United States seeks one. A significant proportion of inmates from treaty countries are not considered for transfer because they have indicated that they are not interested in serving their sentence in their home country. In fact, out of a population of over 40,000 inmates from treaty transfer nations, a significant portion – estimated at more than 40 percent in FY 2013 – indicated they were not interested in transfer when informed by BOP about the transfer program. Because the consent of the prisoner is a prerequisite for transfer, a sizeable group of prisoners are eliminated on this basis alone. Out of the over 40,000 inmates from treaty countries incarcerated by BOP in FY 2013, the applications of 1,422 willing and eligible inmates were forwarded to the Department for further consideration.

Suitability Criteria for Prisoner Transfers are Based on Rehabilitation, Law Enforcement, Public Safety, and Other Important Considerations

Even if the BOP has determined that an inmate is eligible to transfer, the Department must carefully evaluate each application to ensure that the prisoner is suitable for transfer. A significant number of inmates are not. For example, in FY 2013, of the 1,422 applications by interested and eligible inmates forwarded from BOP to the Department's International Prisoner Transfer Unit, most were deemed unsuitable for transfer. This is because the transfer of an inmate requires balancing several factors including public safety, consideration for victims, law enforcement interests, as well as the rehabilitation of the inmate.²

² The factors that the Department considers include: the strength of family and other social ties to the sentencing and receiving countries; acceptance of responsibility for the crime; cooperation with law enforcement; criminal history; seriousness of the offense; the prisoner's remaining criminal ties to the sentencing and receiving countries; whether the prisoner's assistance is required in pending or future trials or investigations; possible sentencing disparities; whether transfer would facilitate the prisoner's renewed association with his criminal associates in his home country; interests of victims; and life-threatening illnesses of the prisoner or his immediate family.

For example, because the purpose of the transfer program is to rehabilitate the prisoner in his home country, in a familiar culture and near family and friends, transfer may be denied if the prisoner has no actual connection or ties to the requested country, or if the majority of a prisoner's important social contacts remain here. A large percentage of Mexican national applicants, for example, are denied because they have become domiciliaries of the United States. In fact, the Mexican bilateral treaty expressly excludes the transfer of domiciliaries. Others may be denied because their presence is required for testimony or in an ongoing criminal investigation. There are also significant public safety concerns that must be considered as well. If a prisoner has a record of multiple illegal entries into and removals from the United States and is likely to return to the United States after transfer, that inmate may be deemed unsuitable. Finally, because a transferred sentence is administered according to the laws and procedures of the receiving country (including provisions for conditional release), in some cases, the interests of justice, including impact on victims, may not be furthered if an offender will be released early and serve a significantly shorter sentence abroad than imposed in the United States.

Employing these guidelines in a principled, reasoned, timely, and consistent manner, the Department approved approximately 36 percent of applications by eligible interested inmates processed in FY 2013.

Treaty Countries May Also Deny Transfer or Delay the Processing of Applications, Thus Further Reducing The Number of Transfers

Even after the Department has approved the application of a willing, eligible, and suitable inmate, the receiving country may still deny the transfer. The Status Report has acknowledged that "even if the IPTU increases the number of inmates approved for transfer, any cost savings or reduction in the prison population is contingent upon the treaty nations approving requests. . . ." (Status Report at 36). Many countries, most notably Mexico and Canada, deny significant numbers of their nationals for transfer, while others fail to provide the Department with a decision on cases approved by the United States. Moreover, decisions are sometimes not made until only several months remain on the sentence, at which point transfer becomes impractical. Despite these limitations, as the Status Report indicates, when calculated based on inmates who are both eligible and interested and whose applications were forwarded by BOP, 17 percent of inmates were ultimately transferred. (Status Report at 11).

The Department Concurs in the Recommendations Set Forth by the Status Report

The Department remains committed to increasing the number of approved transfers as a result of ongoing improvements to the administration of the transfer program. Since the issuance of the 2011 Report, the Department has worked collaboratively with the OIG to implement all of its prior recommendations and will continue to do so. The Department fully concurs with all five recommendations as set forth in the Status Report, which are designed to improve both the management and effectiveness of the transfer program and we have already taken steps to implement them.

OIG ANALYSIS OF THE DEPARTMENT'S RESPONSE

This report provides the status of the recommendations from the Office of the Inspector General's (OIG) previous review of the treaty transfer program in 2011, and contains five additional recommendations.¹⁰⁰ New recommendations 1 and 2 are directed to both the BOP and the Criminal Division. Recommendations 3 and 4 are directed only to the Criminal Division. Recommendation 5 is directed to the Office of the Deputy Attorney General. The OIG provided a formal draft of this status report to the Department of Justice's (Department) Criminal Division, the Federal Bureau of Prisons (BOP), and the Office of the Deputy Attorney General.

The Criminal Division responded to the report on behalf of the Department of Justice (Department), including the BOP and the Office of the Deputy Attorney General. The Department's response (see Appendix 4) combined general comments and responses to this report's five recommendations. In its response to the working draft of this report, the Department had provided comments describing actions taken or planned in response to the OIG's recommendations. We discuss the OIG's analyses of the Department's responses, as well as the actions necessary to close the recommendations, below.

The Department's General Comments

Department Comment: The Department remains concerned with the OIG's continued emphasis that less than one percent of inmates from treaty countries are ultimately transferred. The Department stated that the OIG's conclusion disregards that a significant percentage of foreign national inmates are ineligible for transfer based on treaty or statutory restrictions, or, if eligible, choose not to seek transfer, and that even those inmates who are determined to be statutorily eligible may not be suitable for transfer. When these constraints are taken into account, the transfer rate was 17 percent of eligible and interested inmates in FY 2013. The Department states that based on its records the overall approval rate of applications by eligible, interested inmates processed in FY 2013 was 36 percent, but approximately half of these inmates were not ultimately transferred for reasons beyond the Department's control.

OIG Analysis: The OIG determined the percentage of ultimately transferred inmates based on data provided by the BOP and the Office of Enforcement Operations' (OEO) International Prisoner Transfer Unit (IPTU). It is correct that less than 1 percent were transferred. In FY 2013, 245 foreign national inmates from treaty nations were ultimately transferred, representing less than 1 percent (0.6 percent) of the 42,954 foreign national inmates from treaty nations in BOP custody. The OIG recognizes that there are many reasons for the low transfer rate, including

¹⁰⁰ DOJ, OIG, *The Department of Justice's International Prisoner Transfer Program, Evaluation and Inspections Report I-2012-02* (December 2011).

APPENDIX 5

those the Department cited, which are discussed in this status report. In addition, the OIG specifically acknowledges the Department's interpretation of the transfer rate in the report. However, as discussed above, the OIG correctly determined that less than 1 percent of all inmates from treaty nations are ultimately transferred based on data the BOP and the IPTU provided. Overall, despite the reasons the Department cited for the low transfer rate, all of which we discuss in the status report, the fact remains that very few inmates from treaty nations are transferred to their home countries each year.

Department Comment: The Department stated that the OIG detailed the many actions that the Department has taken to improve the administration of the transfer program. The BOP has improved its communication about the transfer program, increased awareness, and provided further meaningful opportunities to apply for transfer. The IPTU has taken a number of steps to ensure uniformity in making suitability determinations, to encourage a forward-leaning view towards transfer, to expedite processing of cases, and to provide for reconsideration of decisions.

OIG Analysis: The report discusses many actions that the Department has taken to improve the administration of the treaty transfer program since the OIG's first report in 2011. However, the OIG believes the Department can still take a number of discrete steps to improve the program's effectiveness. For example, and perhaps most importantly, Department leadership can work with the treaty transfer partners, including the Department of State and foreign national representatives, to develop and support a strategy to increase the number of foreign national inmates ultimately transferred.

Department Comment: The Department stated that, in both the 2011 OIG report and the current Status Report, the OIG has described the transfer program as a mechanism to reduce prison costs and alleviate prison overcrowding and has criticized the Department for not making more effective use of the program. The Department agrees that ancillary benefits of the program include potential cost savings and reduction in prison overcrowding, but stated that these were not the reasons why Congress originally authorized the program. Congress, which at the time of the bill's passage was primarily concerned about securing the return of Americans incarcerated in poor conditions in foreign prisons, articulated three legislative purposes underlying the creation of the program: (1) facilitate rehabilitation of offenders; (2) improve bilateral relations between transfer nations; and (3) encourage humanitarian treatment of inmates.

Also, the OIG suggests that the Department has the means to significantly increase the number of inmates transferred each year but is not making full use of the program because only a small number of foreign nationals are actually transferred each year. The OIG reaches this conclusion by measuring the actual number of transferred inmates against the number of inmates from treaty nations (over 40,000). The OIG's calculation ignores the fact that the majority of those inmates are ineligible based on statute or treaty, uninterested in transfer or unsuitable for transfer, and that even inmates who are approved for transfer by the

Department may still have their applications denied or not acted upon by their home country.

OIG Analysis: While outside of the scope of this status review, the OIG notes that the IPTU approved 152 of 158 applications (96 percent) from American national inmates requesting transfer back to the United States from FY 2011 through FY 2013. By contrast, the IPTU approved only 33 percent of applications from foreign national inmates requesting transfer out of the United States. As reflected in the OIG's 2014 report on the Top Management Challenges facing the Department, the OIG believes that the Department continues to face two interrelated crises in the federal prison system.¹⁰¹ First, the Department projects that in the years ahead the costs of the federal prison system will continue to increase, consuming a large share of the Department's budget. Second, federal prisons remain significantly overcrowded and therefore face a number of important safety and security issues. The Department agrees that ancillary benefits of the treaty transfer program include potential cost savings and reduction in prison overcrowding. The OIG continues to assert that a more effective treaty transfer program would advance the purposes of the program as Congress articulated it in 1977 and assist the Department in addressing the crises it faces today.

As discussed above, the OIG reached its conclusion regarding the number of ultimately transferred inmates based on data the BOP and the IPTU provided. We examined in detail the circumstances that continue to limit the number of foreign national inmates from treaty nations who are transferred. This includes the failures of treaty nations to accept inmates whom the United States has approved for transfer. The OIG also discussed that while OEO and IPTU officials consistently engage treaty partners and annually report to Congress on the difficulties of securing more transfers and timely adjudications, senior Department leadership has not directly assisted these officials. Several Department of Justice and Department of State officials told us that the transfer program would become more effective only if senior Department of Justice leadership became more involved.

Department Comment: The Department stated that a significant number of inmates are prohibited from participating in the transfer program due to either statutory or treaty-based restrictions. Mexican nationals, for example, who have been convicted solely of immigration crimes or who are serving life sentences are excluded from transfer by the United States' bilateral treaty with Mexico. Because the majority of foreign national inmates in federal prisons are Mexican nationals and many of these offenders were convicted of immigration offenses, this treaty requirement substantially reduces the pool of eligible transfer candidates. Other restrictions bar inmates with less than six months remaining on their sentence, or with a pending appeal, from transferring.

¹⁰¹ DOJ, OIG, *Top Management and Performance Challenges Facing the Department of Justice - 2014*, <https://oig.justice.gov/challenges/2014.htm>.

APPENDIX 5

OIG Analysis: The report acknowledges that statutory and treaty restrictions affect the transfer eligibility of foreign national inmates. As the Department stated, the OIG specifically notes that Mexican nationals convicted solely of immigration crimes are excluded from transfer by the United States' bilateral treaty with Mexico. The OIG also discusses OEO and IPTU officials' annual reports to Congress on behalf of the Department that describe many of the circumstances that limit the treaty transfer program's effectiveness.

Department Comment: The Department stated that the transfer program is voluntary and requires the consent of the inmate, the sentencing country, and the administering country. Therefore, neither an inmate nor a receiving country can be compelled to proceed with a transfer even if the United States seeks one. A significant proportion of inmates from treaty nations are not considered for transfer because they have indicated that they are not interested in serving their sentence in their home country. Out of over 40,000 inmates from treaty nations, more than 40 percent in FY 2013 indicated they were not interested in transfer. Because the consent of the inmate is a prerequisite for transfer, a sizeable group of inmates are eliminated on this basis alone. Of the over 40,000 inmates from treaty nations incarcerated by BOP in FY 2013, the applications of 1,422 willing and eligible inmates were forwarded to the Department for further consideration.

OIG Analysis: In Appendix 1 of this status report, the OIG delineates all transfer requirements, including the requirement that the inmate, the sentencing country, and the receiving country must all consent to the transfer. In body of this status report, the OIG discusses the number of inmates from treaty nations who are not interested in transfer and includes the percentage referenced by the Department, as well as the number of applications the BOP forwarded to the IPTU for consideration. As the Department points out, a significant proportion of inmates from treaty nations are not considered for transfer because they have indicated that they are not interested in serving their sentence in their home country. As such, the OIG recommends that the BOP and the Criminal Division consider whether other steps are necessary to further inform eligible but uninterested inmates about the benefits of the program and determine what, if anything, the Department can do to address the reasons eligible inmates are not interested in transfer.

Department Comment: The Department stated that even if the BOP has determined that an inmate is eligible to transfer, the Department must carefully evaluate each application to ensure that the inmate is suitable for transfer. A significant number of inmates are not suitable because the transfer of an inmate requires balancing several factors including public safety, consideration for victims, law enforcement interests, as well as the rehabilitation of the inmate. For example, because the purpose of the program is to rehabilitate the inmate in his home country, transfer may be denied if the inmate has no actual connection or ties to his home country, or if the majority of an inmate's important social contacts remain in the United States. Also, a large percentage of Mexican nationals are denied because they have become domiciliaries of the United States, and the bilateral treaty with Mexico expressly excludes the transfer of domiciliaries. Other inmates may be denied because their presence is required for testimony or an ongoing

APPENDIX 5

criminal investigation. In addition, inmates may be unsuitable for transfer because of multiple illegal entries into and removals from the United States and is likely to return after transfer. Finally, because a transferred sentence is administered according to the laws and procedures of the receiving country (including provisions for conditional release), in some cases, the interests of justice, including impact on victims, may not be furthered if an inmate will be released early and serve a significantly shorter sentence abroad than imposed in the United States.

OIG Analysis: The report states that the IPTU determines the suitability of an inmate for transfer based on factors such as views of the prosecutor, law enforcement concerns about the inmate, the likelihood of the inmate's social rehabilitation, and the possibility that the inmate would return to the United States. In determining whether an inmate is suitable for transfer, the IPTU provides its analysts with guidelines that govern how they are to evaluate transfer requests. In this review, the OIG does not evaluate the IPTU analysts' substantive decisions on transfer requests. Rather, in the 2011 report, the OIG found that the IPTU's suitability determinations were inconsistent and resulted in disparate treatment of inmates in similar circumstances. The OIG based that conclusion on interviews with OEO and IPTU officials and analysts, as well as reviews of 511 IPTU case files. In this status review, the OIG found that OEO and IPTU management had taken a number of steps to improve the consistency of suitability determinations. However, to improve the effectiveness of the treaty transfer program, we recommend that the Criminal Division review the data to determine why the IPTU does not approve more eligible inmates and consider whether further revisions to the IPTU's guidelines or other steps would facilitate such approvals.

Department Comment: The Department stated that after the application of a willing, eligible, and suitable inmate is approved, the receiving country may still deny the transfer. Many countries, most notably Canada and Mexico, deny significant numbers of their nationals for transfer, while others fail to provide the Department with a decision on cases approved by the United States. Decisions are sometimes not made until only several months remain on the sentence, at which point transfer become impractical. Despite these limitations, 17 percent of inmates were ultimately transferred.

OIG Analysis: The limitations on the number of inmates ultimately transferred are discussed in the OIG's 2011 report and at length in this status report, specifically including Canada's and Mexico's actions in response to inmate applications the Department approved for transfer. The OIG also discusses OEO and IPTU officials' efforts to mitigate these limitations, as well as the difficulties these officials encounter when attempting to secure more transfers and timely adjudications. Finally, as discussed above, the OIG determined that less than 1 percent of inmates from treaty nations were ultimately transferred based on data the BOP and the IPTU provided, though the OIG also acknowledges the Department's position that 17 percent of inmates who were eligible, interested, and forwarded were transferred.

The Department's Response to Recommendations

Recommendations for the BOP and the Criminal Division

Recommendation 1: Regularly exchange, and reconcile as necessary, data on foreign national transfer requests: those determined eligible, approved, denied, and ultimately transferred from Bureau of Prisons custody.

Department Response: The Department concurred with the recommendation, stating that BOP will provide monthly data to the OEO and the OEO will reconcile all the numbers at the end of each fiscal year. Also, the OEO continues to monitor and instruct its employees to ensure they enter data correctly.

OIG Analysis: The Department's actions are responsive to the recommendation. By February 19, 2016, please provide copies of the monthly data the BOP provides to the OEO, a summary of the OEO's efforts to reconcile any disparities between BOP and IPTU data, and a description the OEO's efforts to monitor and instruct its employees to ensure they enter data correctly.

Status: Resolved.

Recommendation 2: Consider whether other steps are necessary to further inform eligible but uninterested inmates about the benefits of the treaty transfer program and what, if anything, the Department can do to address the reasons eligible inmates are not interested in transfer.

Department Response: The Department concurred with the recommendation, stating it is committed to doing what it reasonably can to ensure that eligible inmates know about the availability of the transfer program. The Department stated that, although it would be neither practical nor productive for IPTU staff to scan SENTRY records for suitable candidates, there are positive actions that the Department can take to raise the profile of the transfer program in federal prisons. The BOP and the OEO will work on a joint brochure to distribute to foreign national inmates in federal custody. Also, the OEO plans to redistribute its letters to federal public defenders and criminal defense organizations to remind them of the availability of the transfer program.

OIG Analysis: The Department's actions are responsive to the recommendation. However, the OIG believes that the BOP could assist the OEO and the IPTU with data for analysis on inmates it has deemed eligible, as well as reasons why inmates are not interested in transfer. The OIG encourages OEO and IPTU officials to discuss with the BOP what data would be useful for identifying potentially suitable inmates for transfer and whether that data is available from the BOP. In addition, OEO and IPTU officials should discuss with the BOP what data can be obtained regarding the reasons why eligible inmates are not interested in transfer so that the Department can determine what, if anything, can be done to address these reasons. By February 19, 2016, please provide a copy of the joint BOP/OEO brochure, as well as copies of letters redistributed to federal public

APPENDIX 5

defenders and criminal defense organizations to remind them of the availability of the transfer program.

Status: Resolved.

Recommendations for the Criminal Division

Recommendation 3: Monitor staffing levels at the International Prisoner Transfer Unit and consider whether its resources are appropriate to enable them to timely review transfer applications.

Department Response: The Department concurred with the recommendation, stating that when the OIG last visited the IPTU there was a large backlog of cases that the IPTU has since reduced. Although the Department states that the IPTU does not currently need additional resources, Criminal Division management will continue to monitor the IPTU's workload closely to ensure that the IPTU processes transfer cases in a timely manner and is appropriately staffed using established budgetary processes.

OIG Analysis: The Department's actions are responsive to the recommendation. In this status report, the OIG acknowledges the Criminal Division's progress in eliminating the backlog of cases pending the IPTU's transfer decision. Also, the OIG recognizes the Criminal Division's efforts to monitor the IPTU's workload to ensure cases are processed in a timely manner. However, the OIG believes the Criminal Division should consider additional permanent staff for the IPTU so that, in addition to current responsibilities, the IPTU can further improve the effectiveness of the transfer program, as described in this status report. By February 19, 2016, please provide a summary of how the Criminal Division monitors the IPTU's workload and whether the IPTU needs additional permanent staff to further improve the effectiveness of the transfer program.

Status: Resolved.

Recommendation 4: Review the data to determine why more eligible inmates are not approved for transfer, and consider whether further revisions to the International Prisoner Transfer Unit's guidelines or other steps would facilitate such approvals.

Department Response: The Department concurred with the recommendation, stating that on a regular basis the Criminal Division will review the OEO's suitability guidelines to ensure they are not unnecessarily restrictive. The OEO has instituted procedures and guidelines to ensure that suitability decisions are correctly made and that the decisions are consistent with and further the goals of the transfer program. The OEO regularly provides statistics about these decisions to the Office of the Assistant Attorney General.

OIG Analysis: The Department's actions are responsive to the recommendation. By February 19, 2016, please provide a description of the

APPENDIX 5

Criminal Division's review of the suitability guidelines, including frequency and any steps taken to ensure the IPTU makes correct suitability decisions and the guidelines are not unnecessarily restrictive, as well as copies of statistics about OEO decisions that are provided to the Office of the Assistant Attorney General.

Status: Resolved.

Recommendation for the Office of the Deputy Attorney General

Recommendation 5: Actively support a high-level working group with its treaty transfer partners, including the Department of State, and bilateral meetings with foreign national representatives, when necessary, to develop and support a strategy to facilitate the transfer of more foreign national inmates from the custody of the Bureau of Prisons.

Department Response: The Department concurred with the recommendation, stating that Criminal Division leadership will engage strategically with foreign partners that have low transfer approval rates in an attempt to increase the number of transfers authorized by those treaty partners. Also, Criminal Division leadership will continue efforts to identify opportunities to engage with such strategic treaty partners and to solicit opportunities for senior Department officials, such as the Attorney General, Deputy Attorney General, or Assistant Attorney General, to encourage their counterparts in these countries to increase their approvals. Finally, the Criminal Division intends to have a Deputy Assistant Attorney General meet with foreign counterparts from Mexico, Canada, and other designated countries to discuss ways to increase the number of foreign nationals transferred from BOP custody.

OIG Analysis: The Department's actions are partially responsive to the recommendation. The OIG believes that the Department's response represents a meaningful attempt to facilitate the transfer of more foreign national inmates from BOP custody. However, the Department's response does not describe the creation of a high-level working group, efforts to develop a strategy, or efforts to engage the Department of State with the active support of Department leadership. The OIG believes that the challenges associated with facilitating the transfer of more foreign national inmates approved by the Department requires a plan developed and supported by a high-level working group in consultation with its treaty transfer partners, including the Department of State, actively supported by Department leadership. Please clarify whether the Department intends to develop such a plan. Also, please provide a description of how Criminal Division leadership engaged "strategically" with foreign partners whose transfer approval rates are low. In addition, please identify the opportunities identified for senior Department officials, such as the Attorney General, Deputy Attorney General, or Assistant Attorney General, to engage with treaty partners and encourage their foreign counterparts to increase their approvals and describe the outcomes of those efforts. Finally, please identify all engagements between the Criminal Division's Deputy Assistant Attorney General and his foreign counterparts from Mexico, Canada, and other designated

APPENDIX 5

countries and describe the outcome of these engagements. Please respond to the above requests by February 19, 2016.

Status: Resolved.

The Department of Justice Office of the Inspector General (DOJ OIG) is a statutorily created independent entity whose mission is to detect and deter waste, fraud, abuse, and misconduct in the Department of Justice, and to promote economy and efficiency in the Department's operations. Information may be reported to the DOJ OIG's hotline at www.justice.gov/oig/hotline or (800) 869-4499.



Office of the Inspector General
U.S. Department of Justice
www.justice.gov/oig