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Congressional Committees

## Department of Homeland Security: Review of the Fiscal Year 2017 Entry/Exit Overstay Report

Each year, millions of foreign visitors, or nonimmigrants, legally enter the United States on a temporary basis under specific nonimmigrant categories. They may travel to the United States with or as permitted, without a nonimmigrant visa and then enter the United States after admission at a U.S. port of entry for an authorized period of stay.<sup>1</sup> Overstays are nonimmigrants who remain in the United States beyond the expiration of their authorized period of stay, regardless of whether they ultimately depart. The Department of Homeland Security (DHS) has primary responsibility for identifying and addressing suspected overstays. According to DHS, identifying overstays is important for national security, public safety, and immigration enforcement.

Within DHS, multiple components play a role in identifying and addressing suspected overstays.

U.S. Customs and Border Protection (CBP) is tasked with, among other duties, inspecting all people seeking entry or applying for admission into the United States to determine their admissibility and compliance with U.S. law. CBP has an electronic process for identifying overstays who are suspected or known to have remained in the country beyond the expiration of their authorized period of stay. In addition, U.S. Immigration and Customs Enforcement (ICE) is the lead agency for enforcing immigration law in the interior of the United States and is primarily responsible for overstay enforcement. Further, U.S. Citizenship and Immigration Services (USCIS) receives, processes, and maintains documentation pertaining to a nonimmigrant's immigration status, including the extension or change of status, and works with ICE to ensure proper adherence to U.S. immigration laws.

Federal law requires that DHS implement a program to collect data, for each fiscal year, regarding the total number of nonimmigrants who overstayed (i.e., remained in the United States after the expiration of their authorized period of stay) and report annually to Congress.<sup>2</sup> In January 2016, DHS issued its first report on estimated air and sea overstay rates that covered fiscal year 2015.<sup>3</sup> Subsequently, DHS has issued reports covering fiscal years 2016 and 2017.

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<sup>1</sup>Certain individuals are allowed to seek admission without a visa, such as citizens of Canada, as well as participants in the Visa Waiver Program, through which nationals of certain countries may apply for admission to the United States as temporary visitors for business or pleasure without first obtaining a visa from a U.S. embassy or consulate abroad. See 8 U.S.C. § 1187; 8 C.F.R. §§ 212.1, 214.6(d), 217.1-217.7; 22 C.F.R. §§ 41.0-41.3.

<sup>2</sup>See Visa Waiver Pilot Program Reauthorization Act of 1997, Pub. L. No. 105-173, § 2, 112 Stat. 56 (1998) (classified at 8 U.S.C. § 1376).

<sup>3</sup>The nonimmigrant air and sea overstay population refers to those who entered the country through air and sea ports, rather than through land ports. CBP reports limited information on overstays who entered through land ports for reasons discussed later in this report.

The reports provide data on expected departures and overstays by country for nonimmigrants who entered through an air or sea port of entry and who were expected to depart in a particular fiscal year.

The Explanatory Statement accompanying the Consolidated Appropriations Act, 2018 (2018 Explanatory Statement), directed DHS to develop and report within 180 days after enactment (by September 2018) on a statistically-sound metric for measuring the total nonimmigrant air and sea overstay population in the United States at a given time.<sup>4</sup> DHS responded to this directive through its *Fiscal Year 2017 Entry/Exit Overstay Report*.<sup>5</sup> The 2018 Explanatory Statement also included a provision for GAO to review DHS's report and provide a preliminary briefing to the House and Senate Appropriations committees on its review within 90 days after DHS's report is provided to the committees. This report transmits, in the form of the enclosed briefing, our assessment of DHS's report and its findings that we provided to you electronically on December 19, 2018. The briefing examined how DHS identifies the total population of nonimmigrants who entered the United States through air and sea ports and for whom there is no evidence indicating an on-time departure.

To examine how DHS identifies the total population of overstays who entered the United States through air and sea ports, we reviewed DHS's fiscal years 2015 through 2017 Entry/Exit Overstay Reports, including the findings and methodology. In particular, we reviewed these three reports to determine any changes made to the methodology over time. In addition, we reviewed DHS documentation on how department officials determine the number of overstays, including standard operating procedures for developing the Entry/Exit Overstay Reports and an assessment of the methodology used to develop the fiscal year 2014 overstay report.<sup>6</sup> Further, we reviewed prior GAO and DHS Office of Inspector General (OIG) reports on overstay identification and enforcement.<sup>7</sup> We also observed how CBP generates data for the overstay report by watching a CBP official extract data from DHS's overstay data system. Finally, we interviewed CBP, ICE, and USCIS officials involved in the development of the overstay report to learn about their respective roles in generating the report, the data they provide and their data systems, the steps they take to ensure the data are reliable, and any challenges they encounter collecting and reporting the data. On the basis of the information we obtained from these agencies, we determined that the metric for measuring the air and sea overstay population in the United States is logically sound and DHS has taken steps to continually monitor and improve the quality of the data in the underlying databases. As a result, we present high-level summary results for purposes of illustration for the briefing, noting certain known limitations as appropriate.

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<sup>4</sup>164 Cong. Rec. H2045, H2545 (daily ed. March 22, 2018), accompanying Pub. L. No. 115-141, 132 Stat. 348. The nonimmigrant air and sea overstay population refers to those who entered the country through air and sea ports, rather than through land ports.

<sup>5</sup>DHS, *Fiscal Year 2017 Entry/Exit Overstay Report* (Washington, D.C.: Aug. 7, 2018).

<sup>6</sup>DHS did not publish the fiscal year 2014 overstay report because of data reliability concerns.

<sup>7</sup>For example, see GAO, *Border Security: DHS Has Made Progress in Planning for a Biometric Air Exit System and Reporting Overstays, but Challenges Remain*, [GAO-17-170](#) (Washington, D.C.: Feb. 27, 2017) and *Overstay Enforcement: Additional Actions Needed to Assess DHS's Data and Improve Planning for a Biometric Air Exit Program*, [GAO-13-683](#) (Washington, D.C., July 30, 2013). Also see DHS OIG, *Progress Made, but CBP Faces Challenges Implementing a Biometric Capability to Track Air Passenger Departures Nationwide*, [OIG-18-80](#) (Washington, D.C.: Sept. 21, 2018) and *DHS Tracking of Visa Overstays Is Hindered by Insufficient Technology*, [OIG-17-56](#) (Washington, D.C.: May 1, 2017).

We conducted this performance audit from October 2018 to February 2019 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In summary, we found DHS has developed and implemented a metric to calculate the number and rate of air and sea overstays, which it has published annually beginning with its fiscal year 2015 overstay report. CBP collects overstay data and develops the annual overstay report in collaboration with and using data from other DHS components, such as ICE and USCIS. As presented in the annual report, the overstay rate is an automated calculation based on the number of nonimmigrant admissions to the United States through air or sea ports of entry who did not depart in a fiscal year divided by the total number of expected departures for that fiscal year. CBP has also taken steps to improve its identification of overstays and the calculation of the overstay rate by, for example, automating the exchange of nonimmigrant data between CBP, ICE, and USCIS. Based on these and other improvements, CBP has included more complete data in the annual overstay report on more classes of admission over time, such as including foreign students beginning in fiscal year 2016.

DHS's fiscal year 2017 overstay report states that the report accounts for about 97 percent of all air and sea nonimmigrants expected to depart in fiscal year 2017. The remaining 3 percent pertained to classes of admission who are unlikely to overstay, according to DHS (e.g., foreign diplomats and flight crews). According to the fiscal year 2017 overstay report, there were about 52.7 million nonimmigrant admissions to the United States through air or sea ports of entry who were expected to depart the country in fiscal year 2017. DHS identified about 702,000 overstays during that time frame—1.33 percent of admissions. However, the overstay report does not include a metric for determining the total (i.e., cumulative) nonimmigrant air and sea overstay population in the United States at a given time as directed by the 2018 Explanatory Statement. Specifically, the report does not include air and sea overstays from prior years who may remain in the United States. CBP officials stated that they are considering including the total number of suspected air and sea overstays expected to depart since fiscal year 2015—the first year CBP determined overstay data to be reliable—in future reports.

Although the overstay report identifies air and sea overstays, due to existing limitations in collecting departure data in the land environment, the 2017 overstay report provides limited departure and overstay information for land ports of entry, which DHS is required to collect and report by law.<sup>8</sup> When DHS uses data collected at land ports of entry, it is primarily to match records of certain travelers arriving into the United States by air and sea to records of those who may have subsequently departed by land to Canada. However, DHS has efforts underway to collect biographic and biometric data on travelers arriving into and departing the United States at land ports to help develop a more comprehensive overstay estimate. For example, in fiscal year 2017, CBP began planning for a pilot test at the San Luis and Nogales, Arizona, ports of entry to demonstrate the feasibility of acquiring photos of all arriving and departing travelers and comparing those photos using facial recognition to photos in government databases. CBP officials stated that the pilot test for arriving travelers began at the San Luis Port of Entry in September 2018 and the Nogales Port of Entry in October 2018.

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<sup>8</sup>The collection of departure information in the land environment is more difficult than in the air and sea environments due to the major physical, logistical, and operational obstacles involved with electronically collecting an individual's biographic and biometric data.

## Agency Comments

We provided a draft of this report to DHS for comment. DHS provided technical comments, which were incorporated as appropriate.

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

If you or your staff have any questions about this report, please contact me at (202) 512-8777 or [GamblerR@GAO.gov](mailto:GamblerR@GAO.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report include Adam Hoffman (Assistant Director), James Cook, Paul Hobart, Amanda Miller, Sasan J. "Jon" Najmi, Claire Peachey, and Khristi Wilkins.



Rebecca Gambler  
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Enclosure

## List of Committees

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