



June 2019

IMMIGRATION ENFORCEMENT

Actions Needed to Better Handle, Identify, and Track Cases Involving Veterans

Accessible Version

GAO Highlights

Highlights of [GAO-19-416](#), a report to congressional requesters

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Actions Needed to Better Handle, Identify, and Track Cases Involving Veterans

Why GAO Did This Study

Throughout U.S. history, noncitizens have served in the U.S. Armed Forces. Although the Immigration and Nationality Act allows noncitizen service members to acquire citizenship, some veterans may not apply or may not satisfy all eligibility criteria. If the Department of Homeland Security (DHS) determines that a noncitizen veteran is potentially removable, the veteran may be subject to administrative immigration enforcement and removal. ICE, among other things, is responsible for identifying and removing aliens who violate U.S. immigration law.

GAO was asked to review issues related to the removal of noncitizen veterans. This report examines (1) the extent to which ICE has developed and implemented policies for handling and tracking cases of potentially removable veterans; (2) how federal agencies facilitate the naturalization of noncitizen service members and veterans, and what is known about the number who have applied for naturalization; and (3) how removal affects veterans' eligibility for and access to VA benefits and services. GAO reviewed documentation, met with agency officials, analyzed available data on veterans placed in removal proceedings, and conducted a review of removed veterans' alien files. GAO also analyzed data on military naturalization applications.

What GAO Recommends

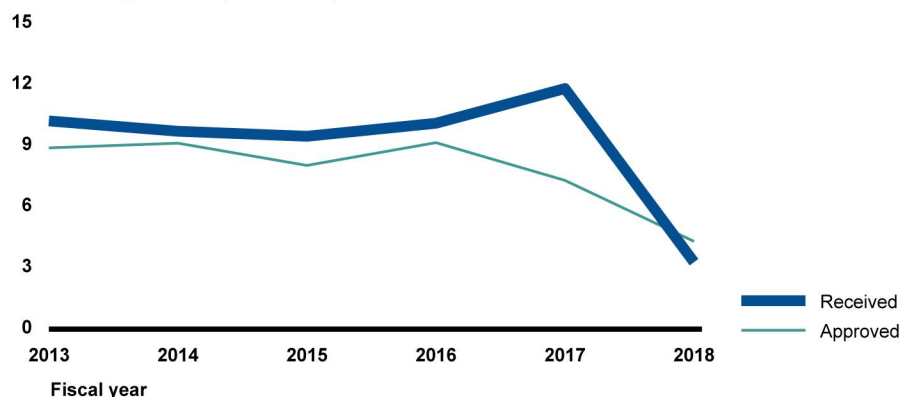
GAO recommends that ICE (1) ensure consistent implementation of its existing policies for handling veterans' cases; (2) develop a policy or revise its current policies to identify and document veterans; and (3) collect and maintain complete data on veterans in removal proceedings or who have been removed. DHS concurred with GAO's recommendations.

What GAO Found

U.S. Immigration and Customs Enforcement (ICE) has developed policies for handling cases of noncitizen veterans who may be subject to removal from the United States, but does not consistently adhere to those policies, and does not consistently identify and track such veterans. When ICE agents and officers learn they have encountered a potentially removable veteran, ICE policies require them to take additional steps to proceed with the case. GAO found that ICE did not consistently follow its policies involving veterans who were placed in removal proceedings from fiscal years 2013 through 2018. Consistent implementation of its policies would help ICE better ensure that veterans receive appropriate levels of review before they are placed in removal proceedings. Additionally, ICE has not developed a policy to identify and document all military veterans it encounters during interviews, and in cases when agents and officers do learn they have encountered a veteran, ICE does not maintain complete electronic data. Therefore, ICE does not have reasonable assurance that it is consistently implementing its policies for handling veterans' cases.

U.S. Citizenship and Immigration Services (USCIS) and the Department of Defense (DOD) have policies facilitating the naturalization of noncitizen service members and veterans, and provide informational resources to noncitizen service members seeking naturalization. The number of military naturalization applications received by USCIS declined sharply from fiscal years 2017 to 2018, resulting in a decreased number of applications approved in fiscal year 2018. USCIS and DOD officials attributed this decline to several DOD policy changes that reduced the number of noncitizens joining the military.

Military Naturalization Applications U.S. Citizenship and Immigration Services (USCIS) Received and Approved, Fiscal Years 2013 through 2018
Number of applications (in thousands)



Source: GAO analysis of U.S. Citizenship and Immigration Services (USCIS) data. | GAO-19-416

Data table for Military Naturalization Applications U.S. Citizenship and Immigration Services (USCIS) Received and Approved, Fiscal Years 2013 through 2018

Fiscal year	Receipts	Approved
2013	10,222	8,899
2014	9,715	9,130
2015	9,469	8,038
2016	10,108	9,156
2017	11,812	7,303
2018	3,291	4,309

Citizenship status, including removal history, does not affect a veteran's eligibility for Department of Veterans Affairs (VA) benefits and services. However, living abroad affects eligibility for certain VA benefits and services. Veterans living abroad may also experience challenges accessing certain benefits and services, such as slower disability claim processing.

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Abbreviations

C&P	Compensation and Pension
CLAIMS-4	Computer-Linked Application Information Management System 4
DHS	Department of Homeland Security
DOD	Department of Defense
EARM	ENFORCE Alien Removal Module
ERO	Enforcement and Removal Operations
FMP	Foreign Medical Program
FOD	Field Office Director
HSI	Homeland Security Investigations
ICE	U.S. Immigration and Customs Enforcement
INA	Immigration and Nationality Act
LPR	Lawful Permanent Resident
MAVNI	Military Accessions Vital to the National Interest
NTA	Notice to Appear
OPLA	Office of the Principal Legal Advisor
PLAnet	Principal Legal Advisor Network
SMART	Standard Management Analysis and Reporting Tool
SAC	Special Agent in Charge
State	Department of State
USCIS	U.S. Citizenship and Immigration Services
VA	Department of Veterans Affairs
VSO	veterans service organization

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June 6, 2019

The Honorable Mark Takano
Chairman
Committee on Veterans' Affairs
House of Representatives

The Honorable Juan Vargas
House of Representatives

Throughout U.S. history, noncitizens have served in the U.S. Armed Forces.¹ Between fiscal years 2013 and 2018, more than 44,000 noncitizens enlisted in the military, according to Department of Defense (DOD) data. Although special provisions of the Immigration and Nationality Act (INA) allow noncitizens who serve in the military to acquire U.S. citizenship, some veterans may not apply or may not satisfy all eligibility criteria.² If at any time the Department of Homeland Security (DHS) determines that a noncitizen veteran is potentially removable, the veteran may be subject to administrative immigration enforcement and removal from the United States.

Within DHS, U.S. Immigration and Customs Enforcement (ICE) is responsible for identifying, apprehending, detaining, litigating charges of removability against, and removing aliens who are in the United States in violation of U.S. immigration law. DHS's U.S. Citizenship and Immigration Services (USCIS) is responsible for adjudicating applications and petitions for immigration benefits, including naturalization applications from U.S. military service members and veterans seeking U.S. citizenship.³ DOD establishes policies governing noncitizens' eligibility to join the military and assists noncitizen service members who wish to naturalize. The Department of Veterans Affairs (VA) administers benefits

¹Throughout this report, we use the term "noncitizens" primarily in reference to a particular subset of aliens—non-U.S. citizens or nationals—who are eligible for U.S. military service, typically because they have Lawful Permanent Resident (LPR) status or another qualifying status.

²Pub. L. No. 82-414, tit. III, ch. 2, §§ 328-9, 66 Stat. 163, 249-51 (1952) (classified, as amended, at 8 U.S.C. §§ 1439-40).

³Naturalization is the process by which U.S. citizenship is granted to a foreign citizen or national after he or she fulfills the applicable eligibility requirements established by U.S. immigration and nationality laws.

and services, such as health care and disability benefits, to veterans of the U.S. military.

You asked us to review issues related to the removal of noncitizen veterans.⁴ This report addresses (1) the extent to which ICE has developed and implemented policies for handling and tracking cases of potentially removable veterans, and what is known about the number and characteristics of veterans who have been placed in removal proceedings or removed; (2) how, if at all, federal agencies facilitate the naturalization of noncitizen service members and veterans, and what is known about the number of those individuals who have applied for naturalization; and (3) how, if at all, removal affects veterans' eligibility for and access to VA benefits and services.

To evaluate the extent to which ICE has developed and implemented policies for handling and tracking cases of potentially removable veterans, and what is known about the number and characteristics of veterans placed in removal proceedings or removed, we reviewed ICE's policies and procedures related to veterans and compared them to criteria in *Standards for Internal Control in the Federal Government*.⁵ We interviewed officials from ICE's Enforcement and Removal Operations (ERO), Office of the Principal Legal Advisor (OPLA), and Homeland Security Investigations (HSI) to discuss the extent to which ICE agents and officers apply these policies when encountering potentially removable veterans. We analyzed record-level data from OPLA's Principal Legal Advisor Network (PLANet) and ERO's ENFORCE Alien Removal Module (EARM) databases to identify veterans who were placed in removal proceedings or removed from fiscal years 2013 through 2018. We selected this timeframe because 2013 is the first year for which data from PLANet are available, according to ICE officials, and 2018 was the most recent full year of data at the time of our review. For the approximately 250 veterans OPLA data indicated were placed in removal proceedings

⁴An alien in the United States may be removable on statutory grounds of inadmissibility (INA § 212(a), 8 U.S.C. § 1182(a)) if they have no prior lawful admission, or deportability (INA § 237, 8 U.S.C. § 1227) if they were previously lawfully admitted. See 8 U.S.C. § 1229a(e)(2). The lawfulness of a prior admission may be at issue in removal proceedings. See 8 U.S.C. §§ 1182(a)(6)(C)(i) (inadmissibility for having fraudulently obtained admission into the United States), 1227(a)(1)(A) (deportability for having been inadmissible at the time of entry).

⁵GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 2014).

and the 92 veterans ERO data indicated had been removed from that population, we reviewed ICE documents about the content and structure of PLANet and EARM, and completed data entry and duplicate record checks. We also discussed the possible limitations of these data with ICE officials to determine the data's reliability. We determined that the OPLA and ERO data were sufficiently reliable for the purpose of describing what is known about the approximate number of veterans placed in removal proceedings or removed.

For the 92 veterans ERO data indicated had been removed, we reviewed the veterans' alien files to assess the extent to which ICE agents and officers who handled the cases adhered to ICE's policies governing the handling of cases involving potentially removable veterans.⁶ We also identified the characterization of their military discharge, the circumstances that led to them being placed in removal proceedings, and their immigration history, including whether they had previously applied for naturalization or other immigration benefits, such as asylum.⁷ We also analyzed summary-level data from VA on the number of those veterans who had service-connected disabilities, including post-traumatic stress disorder or traumatic brain injury.⁸

To describe how federal agencies facilitate the naturalization of noncitizen service members and veterans and what is known about the number of those individuals who applied for naturalization, we reviewed USCIS procedures governing military naturalizations. We also reviewed DOD accession policies for noncitizen service members, including eligibility and

⁶The alien file is a paper file that serves as the central record of all of a noncitizen's immigration-related applications, petitions, and any other relevant documentation.

⁷We excluded two files from the review because the cases were still undergoing litigation. We also excluded two additional files because the alien files were incomplete and one file because the veteran in question appears to have passed away prior to his removal. During the course of our file review, we determined that eight individuals did not serve in the U.S. Armed Forces. We included these files in our review for the purposes of assessing the reliability of ICE's veteran status data. When collecting data on criminal convictions, we limited our analysis to the convictions listed on the veteran's Notice to Appear (NTA), as those convictions formed the basis for initiating removal proceedings which resulted in an order of removal executed by ICE. We did not assess whether and to what extent an individual may have had other criminal convictions beyond those listed on the NTA. We also did not specifically analyze the listed convictions, as DHS has discretion in issuing charges of removability.

⁸To protect the privacy of the removed veterans, we did not request personally identifiable health information for the purposes of this report.

screening requirements. We interviewed USCIS and DOD officials about their efforts to facilitate the naturalization of noncitizen service members and veterans. We analyzed summary-level data from USCIS's BenefitsMart database on the number of noncitizen service members and veterans who applied for naturalization, the number of such applications USCIS approved, and USCIS's average application processing times for military naturalizations from fiscal years 2013 through 2018.⁹ We assessed the reliability of these data by interviewing USCIS officials, reviewing USCIS documents about the design of the BenefitsMart and Computer-Linked Application Information Management System 4 (CLAIMS-4) databases, and reviewing USCIS training for employees who enter information into CLAIMS-4.¹⁰ We determined that the data were sufficiently reliable for reporting what is known about the number of service members and veterans who applied for naturalization.

To describe how, if at all, removal affects veterans' eligibility for and access to VA benefits, we reviewed VA's policies related to managing benefit claims from veterans living abroad, such as VA's claim-processing model for regional offices and foreign case management policies.¹¹ We visited VA's Pittsburgh Regional Office, where we observed VA staff reviewing and processing claims from veterans living abroad, and interviewed VA officials about their processes for managing such claims. We selected the Pittsburgh Regional Office because it is the VA Regional Office responsible for processing claims from veterans living abroad. We analyzed summary-level data from VA's Veterans Benefits Administration's Corporate Database and Veterans Health Administration's Eligibility and Claims Processing System on the number of disability benefit claims and requests for reimbursement received from veterans living abroad from fiscal years 2013 through 2018, VA's average

⁹We limited our analysis to applications from service members and veterans, not their spouses or dependents.

¹⁰USCIS queries the summary-level data using the Standard Management Analysis and Reporting Tool (SMART) that allows access to BenefitsMart and CLAIMS-4 data. BenefitsMart is a section within SMART that contains history records for application dispositions including applications received and approved. CLAIMS-4 contains military naturalization application data.

¹¹We define veterans living abroad as veterans living outside the United States and its territories.

processing times, and the agency's disposition of those claims.¹² To assess the reliability of these data, we reviewed VA documentation on the design of these databases and interviewed VA officials who oversee the processing of claims for veterans living abroad. We determined that the data were sufficiently reliable for reporting the number and average processing time of claims VA completed and received from veterans living abroad.

We also interviewed officials from selected veterans service organizations (VSOs) on the extent to which veterans living abroad face challenges accessing VA benefits.¹³ These VSOs included the American Legion, AMVETS, Disabled American Veterans, and Veterans of Foreign Wars. We selected these VSOs based on the relevance of their missions and the extent to which they have published materials on removed veterans. We also interviewed the director of the Deported Veterans Support House, a nonprofit organization that assists veterans placed in removal proceedings or removed. We also reviewed VA and Department of State (State) policies and interviewed VA and State officials to describe the coordination between VA and State for administering VA benefits abroad.

We conducted this performance audit from July 2018 to June 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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

¹²The Corporate Database is VA's central repository for all veteran demographic, military service, benefit determination and payment data. The Eligibility and Claims Processing System contains data on veteran benefit eligibility, claim documentation related to billed medical care and services, and claim processing information, among other things.

¹³VSOs are private, nonprofit groups that advocate without fees on behalf of veterans. Through a power of attorney, VSOs can represent veterans before VA and assist them with disability compensation claims, among other things. See GAO, *Veterans' Disability Benefits: Better Measures Needed to Assess Regional Office Performance in Processing Claims*, [GAO-19-15](#) (Washington, D.C.: Oct. 3, 2018).

Background

Noncitizens in the Military

In most cases, a noncitizen must be a LPR to enlist in the U.S. Armed Forces.¹⁴ Special provisions of the INA authorize the naturalization of current and recently discharged service members. Qualifying military service includes active or reserve service in the U.S. Army, Navy, Marine Corps, Air Force, Coast Guard, or service in a National Guard unit. A person who has served honorably in the U.S. Armed Forces for 1 year during peacetime may be eligible to apply for naturalization.¹⁵ In addition, during designated periods of hostilities, such as World War I and World War II and the current global war on terrorism, members of the U.S. Armed Forces who serve honorably in an active duty status, or as members of the Selected Reserve of the Ready Reserve, are eligible to apply for naturalization without meeting any minimum required period of service.¹⁶

DOD determines if a service member meets the qualifying service requirement by certifying Form N-426, *Request for Certification of Military or Naval Service*, or by issuing Forms DD-214, *Certificate of Release or Discharge from Active Duty*, NGB-22, *National Guard Report of Separation and Record of Service*, or an equivalent discharge document. The information provided in those forms determines whether or not the service member completed all requirements for honorable service,

¹⁴See 10 U.S.C. § 504. LPRs, also known as “green card” holders, are aliens who are lawfully authorized to live and work permanently within the United States. LPRs may generally accept an offer of employment without special restrictions, own property, receive financial assistance at public colleges and universities, and join the Armed Forces. Certain nationals of three countries in free association with the United States—the Marshall Islands, the Federated States of Micronesia, and Palau—are also eligible for military service.

¹⁵Service is considered honorable when the quality of the member’s service generally has met the standards of acceptable conduct and performance of duty for military personnel. DOD determines if a service member meets the qualifying service requirement.

¹⁶Executive Order 13269, issued on July 3, 2002, provided eligibility for expedited naturalization to noncitizens serving honorably in an active duty status or as members of the Selected Reserve of the Ready Reserve during the global war on terrorism, beginning on September 11, 2001. This current designated period of hostilities will remain in effect until the President issues a new Executive Order terminating the designation. Expedited Naturalization of Aliens and Noncitizen Nationals Serving in an Active-Duty Status During the War on Terrorism, Exec. Order No. 13269, 67 Fed. Reg. 45,287 (Jul. 8, 2002).

including whether the service member served honorably and, if he or she has separated from service, whether his or her separation was under honorable conditions.

In order to naturalize, a member of the U.S. Armed Forces must also meet the requirements and statutory qualifications to become a citizen. Specifically, he or she must demonstrate good moral character and have sufficient knowledge of the English language, U.S. government, and history. Additionally, an applicant must show attachment to the principles of the Constitution and favorable disposition toward the good order and happiness of the United States. However, qualified members of the U.S. Armed Forces are exempt from other naturalization requirements, including application fees and requirements for continuous residence and physical presence in the United States.

DOD also has authority to expand military recruiting to certain nonimmigrants and other lawfully present aliens. Beginning in December 2008, the Military Accessions Vital to the National Interest (MAVNI) program allowed certain U.S. nonimmigrant visa holders, asylees, refugees, and individuals with Temporary Protected Status to enlist in the military if they possessed medical, language, and other types of skills deemed vital for military operations. DOD ended the MAVNI program in fiscal year 2016, citing counterintelligence concerns. Between 2008 and 2016, 10,400 individuals enlisted in the U.S. military through the MAVNI program, according to DOD data.

Immigration Enforcement

DHS is responsible for arresting, detaining, litigating charges of removability against, and removing foreign nationals who are suspected and determined to be in the United States in violation of U.S. immigration laws. Trial attorneys from ICE's OPLA represent the U.S. government as civil prosecutors in immigration court removal proceedings. ICE's ERO is responsible for arresting and detaining potentially removable foreign nationals pending the outcome of their immigration court cases and removing individuals subject to an immigration judge's final order of removal. ICE's HSI is responsible for investigating a range of domestic and international activities arising from the illegal movement of people and goods into, within, and out of the United States.

Individuals may be subject to removal for a wide variety of reasons, including entering the United States illegally, staying longer than their

authorized period of admission, being convicted of certain crimes, or engaging in terrorist activity. LPRs are foreign nationals under U.S. immigration law and therefore may be subject to immigration enforcement and removal from the United States for reasons such as controlled substance violations or conviction of an aggravated felony.¹⁷

Both HSI agents and ERO officers may encounter potentially removable individuals and are to decide whether to issue them a charging document, known as a NTA, ordering the individual to appear before an immigration judge to respond to removal charges.¹⁸ If the judge finds that the respondent is removable and not otherwise eligible for relief, the judge will issue an order of removal, subjecting the respondent to removal by ERO once the order is administratively final.

VA Benefits and Services

The VA is responsible for administering benefits and services, such as health care and disability compensation, to veterans in the United States and abroad, including veterans who have been removed from the United States. VA pays monthly disability compensation to veterans for disabilities caused or aggravated by military service, known as service-connected disabilities.¹⁹ Veterans with service-connected disabilities may also be eligible for other VA benefits and services, such as job training.

¹⁷Statutory grounds of removability include controlled substance violations (other than a single offense involving personal possession of 30 grams or less of marijuana), conviction of an aggravated felony, or conviction of a crime of moral turpitude carrying a sentence of 1 year or more. Prior to, or as part of removal proceedings, LPRs may lose their status due to DHS-initiated rescission proceedings, or as a result of their removability, respectively. LPR status may also be lost through intentional abandonment, for example, by taking up permanent abode in another country or otherwise remaining outside the United States for an extended period of time (unless such absence was intended to be temporary). In any case, an alien determined to be removable and not eligible for any relief or protection from removal, will no longer have lawful status once ordered removed by an immigration judge. ICE is responsible for executing administratively final removal orders.

¹⁸See 8 U.S.C. § 1229; 8 C.F.R. § 239.1. USCIS also has authority to issue NTAs.

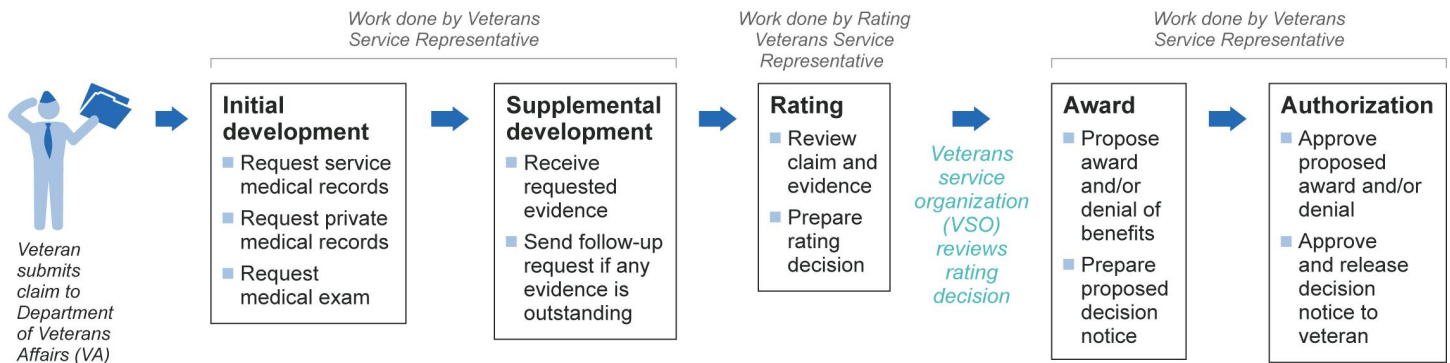
¹⁹38 U.S.C. § 1101, *et seq.* VA's disability ratings are awarded in 10 percent increments, up to 100 percent. As of December 2018, basic monthly payments were, for example, about \$140 for a veteran with a 10 percent disability rating and no dependents, and about \$3,352 for a veteran with a 100 percent disability rating, a spouse, and one child.

VA staff in regional offices process disability compensation claims. After a veteran submits a disability claim to VA, a VA Veterans Service Representative reviews the claim and assists the veteran with gathering relevant evidence, such as military service records, medical examinations, and treatment records from VA medical facilities and private providers. If necessary to provide support to substantiate the claim, VA will provide a medical examination, known as a Compensation and Pension (C&P) exam, to obtain evidence of the veteran's disabilities and their connection to military service. Within the United States, medical providers who work for the Veterans Health Administration often conduct these exams. VA also contracts with private firms to perform these exams. Outside the United States, VA contracts with private firms to perform exams in 33 countries. In countries where VA contractors do not perform exams, VA coordinates with State staff at embassies and consulates to schedule exams with private providers.

Once VA receives the claim evidence, a Rating Veterans Service Representative evaluates the claim and determines whether the veteran is eligible for benefits, and if so, assigns a percentage rating. After a rating is assigned, VA provides VSO staff assisting a veteran with a claim up to 48 hours to review the claim decision prior to finalizing the decision. A Veterans Service Representative then determines the amount of the award, if any, and drafts a decision notice. A senior Veterans Service Representative then reviews and authorizes the award for release to the veteran. See figure 1 for details on the 5 phases of VA's disability compensation claims process. From fiscal years 2013 through 2018, VA received over 8.9 million disability compensation claims from over 3.9 million veterans and awarded over \$20.2 billion in benefits, according to VA data.²⁰

²⁰Benefits awarded also include retroactive benefits, that is, benefits generated after VA rated the veteran's service-connected disability, but before VA staff completed processing the disability compensation claim.

Figure 1: Five Phases of the Department of Veterans Affairs' (VA) Disability Compensation Claims Process



Source: GAO analysis of Department of Veterans Affairs (VA) procedures. | GAO-19-416

ICE Does Not Consistently Adhere to Its Policies for Handling Cases of Potentially Removable Veterans and Does Not Consistently Identify and Track Such Veterans

ICE Has Developed Policies for Handling Cases of Potentially Removable Veterans, but Does Not Consistently Adhere to Those Policies

ICE has developed policies that govern the handling of cases involving potentially removable veterans. When HSI agents and ERO officers learn that they have encountered a veteran, these policies require they conduct additional assessments, create additional documentation, and obtain management approval in order to proceed with the case. Specifically, in June 2004, ICE's Acting Director of Investigations issued a memo giving the HSI Special Agent in Charge (SAC) in each field office the authority to approve issuance of a NTA in cases involving current service members or veterans.²¹ Similarly, in September 2004, ICE's Acting Director of Detention and Removal Operations issued a memo giving the ERO Field

²¹U.S. Immigration and Customs Enforcement, Acting Director of Investigations Marcy M. Forman, *Issuance of Notices to Appear, Administrative Orders of Removal, or Reinstatement of a Final Removal Order on Aliens with United States Military Service* (Washington, D.C.: Jun. 21, 2004).

Office Director (FOD) in each field office the authority to approve issuance of a NTA in cases involving current service members or veterans.²² In order to issue a NTA to a veteran, the SAC and FOD must consider, at a minimum, the veteran's overall criminal history, evidence of rehabilitation, family and financial ties to the United States, employment history, health, and community service. The SAC and FOD must also consider factors related to the veteran's military service, such as duty status (active or reserve), assignment to a war zone, number of years in service, and decorations awarded. To authorize issuance of the NTA, the SAC and FOD are to complete a memo to include in the veteran's alien file and update ICE's EARM database with a brief overview of the facts considered.²³

Additionally, in November 2015, ICE's Director issued a policy establishing ICE's procedures for investigating the potential U.S. citizenship of individuals encountered by ICE.²⁴ The policy states that prior military service is one of several indicators that an individual could be a U.S. citizen.²⁵ Therefore, before issuing a NTA to a veteran or anyone with an indicator of potential U.S. citizenship, the ICE component that first encounters the individual (either HSI or ERO) is to conduct a factual examination, legal analysis, and a check of all available DHS systems, such as USCIS's Person-Centric Query Service, to assess whether the individual is a U.S. citizen.²⁶ ERO or HSI (whichever conducted the factual examination) and OPLA's Office of Chief Counsel must jointly prepare a memorandum that assesses the individual's citizenship status and recommends a course of action, then submit that

²²U.S. Immigration and Customs Enforcement, Acting Director of Detention and Removal Operations Victor Cerda, *Issuance of Notices to Appear, Administrative Orders of Removal, or Reinstatement of a Final Removal Order on Aliens with United States Military Service* (Washington, D.C.: Sept. 3, 2004).

²³ICE uses ENFORCE EARM to track the processing and removal of aliens.

²⁴U.S. Immigration and Customs Enforcement, *ICE Directive 16001.2: Investigating the Potential U.S. Citizenship of Individuals Encountered by ICE* (Washington, D.C.: Nov. 10, 2015).

²⁵Other potential indicators of U.S. citizenship include: information suggesting the individual was born in the United States, information suggesting that one or more of the individual's parents, grandparents, or siblings are U.S. citizens, and information suggesting that the individual was adopted by a U.S. citizen, among other things.

²⁶The Person-Centric Query Service provides a consolidated view of the individual's past interactions with DHS components and other agencies as he or she passed through the U.S. immigration system.

memorandum for review and approval by ICE headquarters. The policy also requires that a copy of the memorandum be placed in the individual's alien file.²⁷

Our analysis of removed veterans' alien files found that ICE does not consistently follow these policies.²⁸ Specifically, ICE policies require agents and officers to document the decision to issue a NTA to a veteran, but do not require agents and officers to identify and document veteran status when interviewing potentially removable individuals.²⁹ Our analysis found that ICE did not satisfy the 2004 requirement for FOD approval in 18 of 87 (21 percent) cases that OPLA's check box indicated involved veterans who were placed into removal proceedings and ERO data indicated had been removed from fiscal years 2013 through 2018. Our analysis also found that ICE did not meet the requirements of the 2015 policy requiring elevation to headquarters in 26 of the 37 cases (70 percent) of the cases for which the policy applied.³⁰ Further, in December 2018 HSI officials told us that HSI has not been adhering to either the 2004 or the 2015 policies because they were unaware of the policies prior to our review. HSI officials stated that they do not distinguish between veterans and nonveterans when conducting administrative or criminal investigations or when deciding whether to issue a NTA. ERO officials stated that the absence of documentation in the alien file does not necessarily indicate that officers did not adhere to the policies; however,

²⁷OPLA also issued guidance directing its attorneys to send an e-mail alert to OPLA headquarters for all new cases involving LPR veterans. We did not analyze compliance with this policy because the policy pertains only to OPLA and does not require attorneys to document the communication in the veteran's alien file. See U.S. Immigration and Customs Enforcement, Office of the Principal Legal Advisor, Deputy Principal Legal Advisor Riah Ramlogan, *Revised Guidance on Reporting and Handling Matters of Interest or Significance* (Washington, D.C.: Nov. 28, 2012).

²⁸We did not analyze adherence to the ICE HSI June 2004 policy for handling cases of potentially removable veterans because ICE officials informed us of the HSI policy in April 2019, which was after our file review was completed.

²⁹As noted above, we analyzed 87 of 92 alien files of removed veterans. We excluded five alien files from our analysis because the files were incomplete, undergoing litigation, or the veteran had appeared to have passed away prior to removal. During the course of our file review, we determined that eight individuals did not serve in the U.S. Armed Forces. We included these eight files in our review for the purposes of assessing the reliability of ICE's veteran status data.

³⁰ICE initiated 50 cases (57 percent) of the removed veterans' cases in our file review prior to November 10, 2015, the effective date of the current ICE policy. Therefore, we excluded cases initiated prior to November 10, 2015 from our analysis of this policy.

as noted above, the policies specifically require ICE to add documentation to the alien file. Because ICE did not consistently follow these policies, some veterans who were removed may not have received the level of review and approval that ICE has determined is appropriate for cases involving veterans. Taking action to ensure consistent implementation of its policies for handling cases of potentially removable veterans, such as issuing guidance or providing training, would help ICE better ensure that potentially removable veterans receive appropriate levels of review and consideration prior to the initiation of removal proceedings.

ICE Has Not Developed a Policy to Identify and Document All Military Veterans It Encounters

ICE has not developed a policy to identify and document all military veterans it encounters. According to ERO officials, when ERO officers encounter an individual, they interview that individual and complete the Form I-213, "*Record of Deportable/Inadmissible Alien*," which documents information on, among other things, the individual's country of citizenship and most recent employer. Officials stated that ERO officers would generally learn about the individual's veteran status during that interview. However, ICE does not have a policy requiring agents and officers to specifically ask about and document veteran status. According to ERO officials, ERO does not need such a policy because ERO's training for new officers, the Basic Immigration Enforcement Training Program, instructs officers to ask about veteran status when interviewing potentially removable aliens. The Basic Immigration Enforcement Training Program includes one lesson plan and one practice exercise stating that the I-213 "*Record of Deportable/Inadmissible Alien*" should include information on military service, as applicable. The lesson plan also includes a list of mandatory questions that ERO officers must ask in every encounter with an alien; however, that list of mandatory questions does not include any questions about military service. Further, the I-213 "*Record of Deportable/Inadmissible Alien*" does not have a specific field to indicate veteran status, and ERO's cover sheet that supervisors use to review the legal sufficiency of NTAs does not contain information about veteran status.

For cases processed by HSI, HSI officials stated that agents would generally learn about the individual's veteran status through the initial interview or through background checks or other information obtained in the course of an HSI investigation. However, during the course of our

review, HSI officials stated that there was no policy requiring agents to ask about or document veteran status because, as discussed above, HSI does not handle veterans' cases differently from other cases.³¹

Without mechanisms in place to identify and document veterans, ICE is not positioned to determine whether or not individuals it encounters are potentially veterans and for which individuals the 2004 and 2015 policies discussed above for handling cases of potentially removable veterans should be applied. *Standards for Internal Control in the Federal Government* state that management should design control activities—that is, the policies, procedures, techniques, and mechanisms that enforce management's directives to achieve the entity's objectives.³² ICE officials told us that the 2004 and 2015 policies are intended to provide guidance and direction to ICE agents and officers for handling cases of potentially removable veterans. ICE officials believe that these policies could be updated with additional guidance to agents and officers to ask about and document veteran status during interviews of potentially removable individuals. Without developing and implementing a new policy or revising its 2004 and 2015 policies to require agents and officers to ask about and document veteran status, ICE has no way of knowing whether it has identified all of the veterans it has encountered and, therefore, does not have reasonable assurance that it is consistently implementing its policies and procedures for handling veterans' cases.

ICE Does Not Maintain Complete Electronic Data on Veterans Who Have Been Placed in Removal Proceedings or Removed

Because ICE has not developed a policy to identify and document all military veterans it encounters, ICE does not maintain complete electronic data on veterans who have been placed in removal proceedings or removed. In the instances in which ICE agents and officers learn that they have encountered a veteran, none of the three ICE components who encounter veterans—ERO, OPLA, and HSI—maintain complete electronic data on the veterans they identify. ERO does not have a specific field for tracking veterans in its database, EARM. According to

³¹As noted above, HSI has a policy for handling cases of potentially removable veterans; ICE officials informed us of this policy at the end of our review in April 2019.

³²GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 2014).

ERO officials, ERO officers can note veteran status on the Form I-213, “Record of Deportable/Inadmissible Alien,” but ERO does not have the ability to electronically search those notes to identify all of the veterans it has encountered. ERO officials stated that they do not maintain data on veteran status because they do not specifically target veterans for enforcement operations. OPLA has a check box tracking veteran status in its database, PLANet, but the field is not mandatory.³³ PLANet also includes a case notes section, where an OPLA attorney may choose to document veteran status information. OPLA officials stated that the reliability of the veteran status box and case notes depends on the diligence of the attorney inputting the case information into PLANet. HSI officials stated that they do not track veteran status at all because, as discussed above, veteran status does not affect their handling of cases.

Our analysis of removed veterans’ alien files identified limitations with the only electronic data on veteran status ICE maintains—OPLA’s check box in the PLANet database. Specifically, though OPLA’s check box indicated that all 87 of the aliens whose files we reviewed were veterans, we found that 8 of the 87 individuals (9 percent) did not serve in the U.S. Armed Forces, according to the information in their alien files. After reviewing these cases, OPLA officials stated that the individuals were incorrectly designated as veterans due to human error. OPLA officials stated that OPLA does not require attorneys to systematically track veteran status information in PLANet because the database is not intended to be a data repository, but rather serves as a case management system for OPLA attorneys. OPLA officials stated that the official record of the alien’s case is the paper alien file.

Because ICE does not maintain complete electronic data on potentially removable veterans it encounters, ICE does not know exactly how many veterans have been placed in removal proceedings or removed, or if their cases have been handled according to ICE’s policies. *Standards for Internal Control in the Federal Government* state that management uses quality information to make informed decisions and evaluate the entity’s performance in achieving key objectives and addressing risks.³⁴ Quality information is appropriate, current, complete, accurate, accessible, and provided on a timely basis. While tracking veteran status in the paper

³³PLANet is a case and document management system supporting the general legal work and immigration litigation performed by OPLA personnel.

³⁴[GAO-14-704G](#).

alien file may allow ICE to review whether a specific individual is a veteran, it does not provide the type of complete and accessible electronic data that would allow the agency to systematically evaluate its performance in adhering to its policies. Maintaining complete electronic data on veterans it encounters would assist ICE in determining the extent to which the agency has adhered to its policies for handling cases involving potentially removable veterans. For example, ICE could obtain quality information through a mandatory field, such as a check box to track veteran status.

Available Data Indicate that Approximately 250 Veterans Were Placed in Removal Proceeding or Removed from the United States from Fiscal Years 2013 through 2018

Based on the limited information available in OPLA's PLANet database, approximately 250 veterans were placed in removal proceedings or removed from the United States from fiscal years 2013 through 2018. As noted above, ICE does not maintain complete electronic data on veterans it encounters. While OPLA's PLANet includes some data on veterans who have been placed in removal proceedings, because the entry of veteran status data in PLANet is not mandatory, there could be additional veterans who were placed in removal proceedings or removed during the timeframe of our review who were not noted in PLANet or included in our analysis, as discussed below.

We reviewed the data that were included in PLANet on veterans who were placed in removal proceedings from fiscal years 2013 through 2018 and identified approximately 250 military veterans. This includes those individuals for whom the check box indicating veteran status was checked in PLANet but, as noted above, does not represent complete data on all possible veterans placed in removal proceedings during the time period we reviewed. Among the approximately 250 individuals who were noted in PLANet as veterans in removal proceedings, the most common countries of nationality were Mexico (about 40), Jamaica (about 30), El Salvador (about 10), Trinidad and Tobago (about 10), Germany (about 10), and Guatemala (about 10). At the end of fiscal year 2018, about 115 had been ordered removed, about 25 had been granted relief or protection from removal by an immigration judge, and about 5 had their

cases administratively closed.³⁵ The remainder of the cases were still open as of November 2018.

From fiscal year 2013 through 2018, ERO had removed 92 of the approximately 250 military veterans from the United States, of which 90 were foreign nationals with one or more criminal convictions, according to ERO data. Nine of the removed veterans had service-connected disabilities recognized by VA, including four removed veterans who had service-connected post-traumatic stress disorder.³⁶ Based on our review of the alien files of 87 of the individuals that OPLA's check box indicated were veterans and ERO indicated had been removed, we identified the following characteristics:³⁷

- 26 veterans (30 percent) received an honorable discharge; 26 (30 percent) received a general discharge under honorable conditions; 13 (15 percent) received an other than honorable discharge; 8 (9 percent) received an uncharacterized discharge; 3 (3 percent) received a bad conduct discharge; 2 (2 percent) received a dishonorable discharge; 8 (9 percent) had no evidence of military

³⁵Administrative closure is a procedural tool available to an immigration judge in certain circumstances (subject to limitations set by the Attorney General) to temporarily remove a case from the active calendar. Cases that are administratively closed can be recalendared at a later date. On May 17, 2018, the Attorney General determined that, except as specifically provided in regulation or a judicial settlement, immigration judges and the Board of Immigration Appeals lack general authority to administratively close removal proceedings. For cases which were administratively closed without requisite authority, if DHS or the respondent seeks reopening, the case shall be recalendared. See *Matter of CASTRO-TUM*, 27 I. & N. Dec. 271 (AG 2018).

³⁶In addition to other excluded files, we excluded five files from the VA review because we were unable to obtain Social Security Numbers for those individuals or there was no evidence in the file that the individuals had served in the U.S. military. For the 82 files requested, VA matched data for 76 removed veterans.

³⁷We excluded two files from the review because the cases were still undergoing litigation. We excluded two additional files because the alien files were incomplete and one file because the veteran in question appears to have passed away prior to his removal.

service in their alien file; and 1 (1 percent) did not have a discharge characterization listed in the alien file.³⁸

- 74 veterans (85 percent) were LPRs, 6 (7 percent) were citizens of the Marshall Islands, the Federated States of Micronesia, and Palau who enlisted under the Compact of Free Association, 6 (7 percent) did not have evidence of lawful status, and 1 (1 percent) was a recipient of Deferred Action for Childhood Arrivals.
- 26 veterans (30 percent) had previously applied for naturalization with USCIS; 3 of whom submitted multiple applications. Seventeen of those naturalization applications were denied by USCIS, 9 were administratively closed, and 2 were withdrawn.³⁹
- 68 veterans (78 percent) were ordered removed because of at least one aggravated felony conviction, while the remaining 19 (22 percent) were ordered removed for non-aggravated felony convictions. Of the convictions ICE cited on the 87 veterans' NTAs: 32 veterans had drug-related convictions; 20 had convictions related to sexual abuse, of which 18 involved minors; 21 had convictions related to homicide, assault, or attempted homicides or assaults; 16 had theft-related

³⁸Percentages do not add to 100 percent due to rounding. DOD identifies six characterizations of military discharge: (1) honorable, which is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for military personnel; (2) under honorable conditions (general), which is given to service members whose performance is satisfactory but is marked by a considerable departure in duty performance and conduct expected of service members; (3) under other than honorable conditions, which represents a serious departure from the conduct and performance expected of all service members; (4) bad conduct, which is given to service members only upon conviction at a general or special court martial; (5) dishonorable, which is given for what the military considers the most dishonorable of conduct and is only rendered by conviction at a general court martial; and (6) uncharacterized, which is given to individuals who do not complete 180 days of service. Service members who receive an "honorable" characterization of service are eligible for all VA benefits and services. Service members who receive a "general" characterization of service are eligible for most VA benefits and services, with the exception of some VA education assistance; and service members who receive an "other than honorable" characterization of service may not be eligible for any VA benefits and services.

³⁹USCIS may deny an application if USCIS determines the applicant is not eligible for naturalization, including where the applicant applied on the basis of qualifying military service and USCIS determines the applicant is not eligible on that basis. USCIS may administratively close an application if the applicant fails to appear for his or her initial naturalization examination without good cause and without notifying USCIS of the reason for failing to appear within 30 days of the scheduled appointment. The applicant may request to reopen an administratively closed application without fee by submitting a written request to USCIS within 1 year from the date the application was closed. Generally, military applicants may file a motion to reopen at any time. We were unable to determine the disposition of one naturalization application.

convictions; and 9 had convictions related to firearms, explosives, or explosive material.⁴⁰

USCIS and DOD Have Policies Facilitating the Naturalization of Noncitizen Service Members and Veterans; the Number of Service Members Applying for Naturalization Has Decreased

USCIS and DOD Have Policies Facilitating the Naturalization of Noncitizen Service Members and Veterans

USCIS and DOD have policies facilitating the naturalization of noncitizen service members and veterans, and both agencies provide informational resources to noncitizen service members seeking naturalization. USCIS facilitates the application and naturalization process for current and recently discharged members of the U.S. Armed Forces through a dedicated Military Naturalization Unit, which processes military naturalization applications and assists field officers with administrative naturalization tasks overseas, among other things. USCIS interviews and naturalizes active-duty service members abroad at certain U.S. embassies, consulates, and military installations. To provide information to noncitizen service members and veterans, USCIS maintains a toll-free “Military Help Line” and an e-mail box exclusively for members of the military and their families and publishes an “Immigration 101” presentation for relevant stakeholders, including DOD personnel on military bases. In addition, USCIS provides DOD with a checklist of required documents for military naturalization applications and communication guidelines for naturalization application inquiries, according to USCIS officials.

DOD determines whether a service member meets the qualifying service requirement for naturalization by certifying whether the service member has served “honorably,” and if he or she has separated from service, whether their separation was under honorable conditions. Additionally,

⁴⁰ICE cited multiple convictions on the NTAs of some veterans. Some veterans also had multiple convictions of the same type. Other conviction types included illegal re-entry, kidnapping, and terroristic threats, among others.

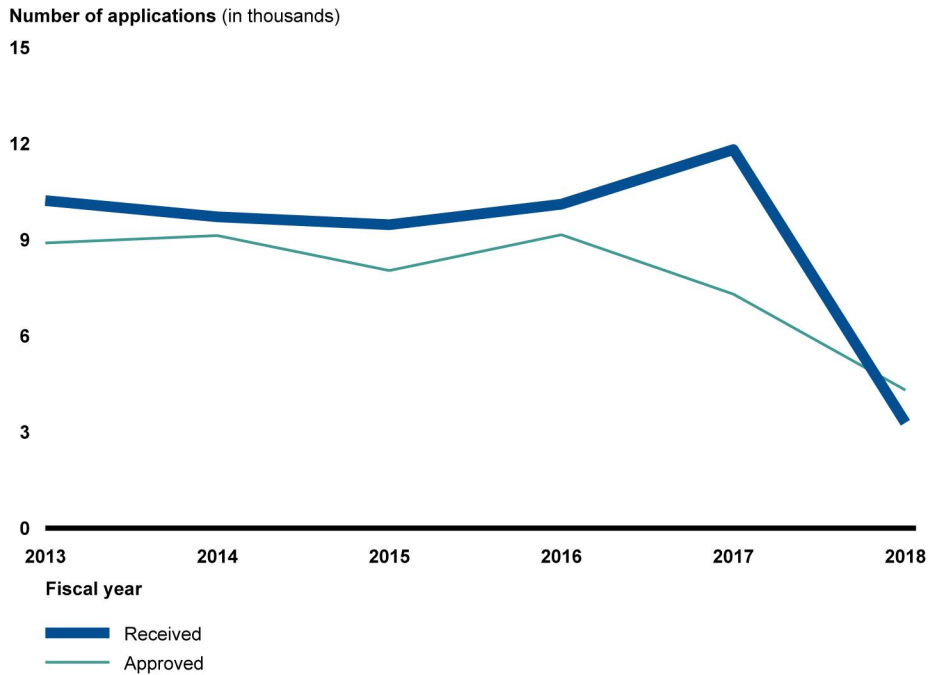
according to DOD officials, every military installation generally designates a naturalization advisor within its Legal Services Office. The advisor, among other things, assists service members with preparation of their naturalization application packets and serves as an intermediary with USCIS staff. For example, at many Army installations, the Army Community Services Office typically performs this function.

The Number of Noncitizen Service Members Applying for Naturalization Declined by 72 Percent from Fiscal Years 2017 to 2018

Although USCIS approved military naturalization applications at a fairly consistent rate from fiscal years 2013 through 2018, the number of applications received declined sharply from fiscal years 2017 to 2018, resulting in a decrease in the number of service members approved for naturalization in fiscal year 2018. From fiscal years 2013 through 2018, USCIS received 54,617 military naturalization applications; USCIS approved 46,835 (86 percent) and denied 3,410 (6 percent).⁴¹ Applicants' most common countries of nationality were the Philippines (6,267 or 11 percent), Mexico (5,760 or 11 percent), Jamaica (3,510 or 6 percent), China (3,213 or 6 percent), and the Republic of Korea (2,982 or 5 percent). While the number of military naturalization applications was relatively stable between fiscal years 2013 and 2017, applications declined by 72 percent from fiscal year 2017 to fiscal year 2018, from 11,812 in fiscal year 2017 to 3,291 in fiscal year 2018, as shown in figure 2. As a result of this decline in applications, the number of service members approved for naturalization also declined, from 7,303 in fiscal year 2017 to 4,309 in fiscal year 2018.

⁴¹Some applications remained pending at the end of fiscal year 2018.

Figure 2: Military Naturalization Applications U.S. Citizenship and Immigration Services (USCIS) Received and Approved, Fiscal Years 2013 through 2018



Source: GAO analysis of U.S. Citizenship and Immigration Services (USCIS) data. | GAO-19-416

Data table for Figure 2: Military Naturalization Applications U.S. Citizenship and Immigration Services (USCIS) Received and Approved, Fiscal Years 2013 through 2018

Fiscal year	Receipts	Approved
2013	10,222	8,899
2014	9,715	9,130
2015	9,469	8,038
2016	10,108	9,156
2017	11,812	7,303
2018	3,291	4,309

Note: According to USCIS officials, the number of applications approved in 2018 exceeded the number of applications submitted because USCIS was processing applications submitted in prior fiscal years.

USCIS and DOD officials attributed the decline in military naturalization applications to several DOD policy changes. First, DOD suspended the MAVNI program in September 2016, which reduced the number of

noncitizens joining the military.⁴² According to DOD officials, due to counterintelligence concerns, DOD suspended the program at the end of fiscal year 2016 and decided not to renew the program in fiscal year 2017.⁴³ Second, in October 2017, DOD issued policies expanding background check requirements for LPR and MAVNI recruits. The policies specify that LPRs must complete a background check and receive a favorable military service suitability determination prior to entering any component of the U.S. Armed Forces.⁴⁴ According to DOD officials, due to backlogs in the background check process, these new recruits were delayed in beginning their service, and officials stated that it may take DOD up to a year to complete enhanced requirements for certain recruits. DOD officials stated that they believe background check backlogs will decrease by the end of fiscal year 2019 and, as a result, the number of noncitizen service members eligible to apply for naturalization will increase. Third, in October 2017, DOD increased the amount of time noncitizens must serve before DOD will certify their honorable service for naturalization purposes.⁴⁵ Under the new policy, noncitizens must complete security screening, basic military training, and serve 180 days

⁴²U.S. Department of Defense Office of the Under Secretary of Defense Personnel and Readiness, Acting Under Secretary of Defense Personnel and Readiness Peter Levine, *Military Accessions Vital to the National Interest Pilot Program Extension* (Washington, D.C.: Sept. 30, 2016).

⁴³The September 2016 policy also requires all incoming MAVNI recruits complete a National Intelligence Agency Check and counter-intelligence interview, which renders the applicant eligible for a national security determination. The applicant then undergoes varying levels of background investigation, depending on the applicant's profession, language category, and country of origin, for a military service suitability determination. If the investigation identifies derogatory information, the appropriate service may administer a polygraph and render a final determination and action.

⁴⁴A favorable military service suitability determination means that an applicant has a favorable national security determination with no derogatory information remaining. U.S. Department of Defense Office of the Under Secretary of Defense Personnel and Readiness, Performing the Duties of the Under Secretary A. M. Kurta, *Military Service Suitability Determinations for Foreign Nationals Who Are Lawful Permanent Residents* (Washington, D.C.: Oct. 13, 2017); U.S. Department of Defense Office of the Under Secretary of Defense, Performing the Duties of the Under Secretary A. M. Kurta and Acting Under Secretary of Defense for Intelligence Kari A. Bingen, *Military Accessions Vital to the National Interest Pilot Program* (Washington, D.C.: Oct. 13, 2017).

⁴⁵U.S. Department of Defense Office of the Under Secretary of Defense Personnel and Readiness, Performing the Duties of the Under Secretary A. M. Kurta, *Certification of Honorable Service for Members of the Selected Reserve of the Ready Reserve and Members of the Active Components of the Military or Naval Forces for Purposes of Naturalization* (Washington, D.C.: Oct. 13, 2017).

for a characterization of service determination.⁴⁶ Previously, DOD granted that determination in as little as a few days of service.

USCIS made several changes to its military naturalization processes in response to or in tandem with DOD's policy changes. First, in July 2017, USCIS determined that the completion of DOD background checks was relevant to MAVNI recruits' eligibility for naturalization. USCIS thus began requiring currently-serving MAVNI recruits seeking military naturalization to complete all required DOD background checks before USCIS interviewed them, approved their applications, or administered the Oath of Allegiance to naturalize them.⁴⁷ Second, in January 2018, USCIS ended its initiative to naturalize new enlistees at basic training sites. This initiative, known as the "Naturalization at Basic Training Initiative", began in August 2009 as an effort to conduct outreach to new enlistees at the Army's five basic training sites and provide noncitizen enlistees an opportunity to naturalize prior to completion of basic training. Because of DOD's October 2017 policy change increasing the amount of time noncitizens must serve before they are eligible for a characterization of service determination, noncitizen service members no longer meet the requirements for naturalization while they are completing basic training. As a result, USCIS closed naturalization offices in Fort Sill, Fort Benning, and Fort Jackson.

USCIS's processing time for military naturalizations also increased, from an average of 5.4 months in fiscal year 2017 to 12.5 months in fiscal year 2018, according to USCIS data. USCIS officials attributed this increase to the backlog in DOD background checks for MAVNI recruits, as well as an increased volume of naturalization applications from non-military applicants.

Removal Alone Does Not Affect Eligibility for VA Benefits and Services, but Living Abroad

⁴⁶The October 2017 policy identifies additional service requirements, including that foreign nationals serving in the Selected Reserve of the Ready Reserve complete 1 year of federal service, or those serving in an active duty status in a hazardous duty area complete at least 1 day of service.

⁴⁷In general, naturalization applicants take the Oath of Allegiance in order to complete the naturalization process.

Affects Eligibility and Access to Certain Benefits and Services

Removal Alone Does Not Affect Eligibility for VA Benefits and Services; Veterans Living Abroad are Eligible for Fewer Benefits and Services than Those Living In the United States

Citizenship status, including immigration enforcement or removal history, does not affect a veteran’s eligibility for VA benefits and services, according to VA officials. As a result, veterans who have been removed by ICE are entitled to the same VA benefits and services as any other veteran living abroad.

Although being removed for violation of immigration law does not in and of itself affect eligibility for VA benefits and services, living abroad affects eligibility for certain benefits and services, as shown in table 1. These differences pertain to all veterans living abroad, including both veterans who have been removed by ICE and veterans who choose to reside abroad.

Table 1: Eligibility for Department of Veterans Affairs (VA) Benefits and Services for Veterans Living Abroad

Benefit or Service Type	Description	Eligibility for Veterans Living Abroad
Health Care	VA provides comprehensive health care services to veterans living in the United States through a network of VA Medical Centers and outpatient clinics. Comprehensive care includes preventive care, inpatient hospital services, emergency care, and mental health services.	Limited Eligibility —Veterans living abroad are not eligible to receive comprehensive health care. Through its Foreign Medical Program, VA will reimburse veterans for treatment of service-connected conditions only.

Benefit or Service Type	Description	Eligibility for Veterans Living Abroad
Disability Compensation	<p>Disability compensation is a monthly, tax-free payment to veterans who became ill or injured while serving in the military, or whose service aggravated existing conditions. To assess whether a veteran is eligible for this compensation, VA staff may request that the veteran undergo a medical examination, known as a Compensation and Pension (C&P) exam, to provide evidence of disabilities and their connection to military service. VA reimburses the veteran for the expense of traveling to this exam.</p> <p>Veterans may choose to appeal VA's disability benefit decision. As part of this process, veterans living in the United States may request an appeals hearing. VA conducts video and in-person hearings at VA regional offices, as well as in-person hearings in Washington, D.C.</p>	<p>Eligible—Veterans living abroad are eligible for disability compensation, but VA does not reimburse veterans for travel costs associated with attending their C&P exams.</p> <p>Veterans living abroad cannot attend an appeals hearing unless they are willing and able to travel to the United States at their own expense.</p>
Education and Training	<p>Through the GI Bill and other programs, VA provides resources to pay for college, graduate school, and training programs. Education benefits include, among other things, tuition assistance, reimbursements for licensing or professional exams, and resources to cover supplies while in an apprenticeship.</p>	<p>Eligible with Additional Requirements—In addition to basic eligibility requirements like attending a VA-approved higher education program, veterans living abroad must attend approved programs where the veteran will earn a standard college degree or its equivalent.</p>
Vocational Rehabilitation and Employment	<p>Veterans with a service-connected disability may be eligible to apply for Vocational Rehabilitation and Employment services. If eligible, such veterans may receive employment assistance, job training, and supportive rehabilitation services, among other services.</p>	<p>Limited Eligibility—Veterans living abroad are eligible to apply for some, but not all Vocational Rehabilitation and Employment services. For example, they are generally not eligible to apply for a plan for extended evaluation (e.g. special rehabilitative services to determine ability to work, among other things) due to the need for medical referrals and intensive case management requirements.</p>
Home Loans	<p>VA provides home loan guaranty, Specially Adapted Housing grants, and other housing-related programs to help veterans, service members, and eligible surviving spouses buy, build, repair, retain, or adapt their home for personal occupancy.</p>	<p>Limited Eligibility—VA home loans may only be used to purchase property in the United States or its territories or possessions (Puerto Rico, Guam, Virgin Islands, American Samoa and the Northern Mariana Islands). Veterans living abroad with certain severe service-connected disabilities are eligible for Specially Adapted Housing grants to assist with building, remodeling, or purchasing an adapted home.</p>
Life Insurance	<p>VA offers several group life insurance options.</p>	<p>Same Benefits Apply</p>

Benefit or Service Type	Description	Eligibility for Veterans Living Abroad
Pension	<p>VA offers a tax-free, monetary benefit for low-income veterans.</p> <p>Veterans may choose to appeal VA's pension benefit decision. As part of this process, veterans living in United States may request an appeals hearing. VA conducts video and in-person hearings at VA regional offices, as well as in-person hearings in Washington, D.C.</p>	<p>Eligible—Veterans living abroad are eligible for pension benefits, but VA does not reimburse veterans for travel costs associated with attending their C&P exams.</p> <p>Veterans living abroad cannot attend an appeals hearing unless they are willing and able to travel to the United States at their own expense.</p>
Burial Benefits	<p>VA offers several burial benefits to veterans, including a flat-rate monetary burial allowance, a burial site in a national cemetery, and a government headstone or marker at no cost to the veteran.</p>	Same Benefits Apply

Source: GAO analysis of Department of Veterans Affairs (VA) information. | GAO-19-416

Removed veterans may face additional obstacles in receiving certain benefits for which they are otherwise eligible because they may be barred from traveling to the United States. For example, a removed veteran may not be able to attend a hearing to appeal a VA disability rating decision because VA conducts those hearings exclusively in the United States.⁴⁸ Additionally, a removed veteran may not be able to obtain certain Vocational Rehabilitation and Employment services if the veteran is unable to travel to the United States for medical referrals and case management.

Veterans Living Abroad Face Challenges Accessing Certain Benefits and Services

Veterans living abroad, including removed veterans, may experience challenges accessing certain benefits and services, including slower disability claim processing and Foreign Medical Program (FMP) claim reimbursement, difficulties related to the scheduling and quality of C&P exams, and difficulties communicating with VA.⁴⁹

⁴⁸A removed veteran seeking entry into the United States on a temporary basis despite having been previously removed could potentially apply for permission to reapply for admission, or seek parole for urgent humanitarian reasons or significant public benefit.

⁴⁹We have additional ongoing work examining VA benefits and services administered to veterans living abroad.

Claims and Reimbursement Processing Timeliness

According to VA officials, VA's processing time for disability compensation claims for veterans living abroad (foreign claims) has improved since fiscal year 2013. For example, in fiscal year 2013, VA processed foreign claims in an average of 521 days and in fiscal year 2018, VA's processing time for foreign claims decreased to an average of 131 days. However, as of September 2018, VA was not meeting its timeliness goal of 125 days for processing foreign claims and VA took an average of 29 days longer to process foreign claims than domestic claims.⁵⁰ VA officials attributed the longer processing times for foreign claims to unreliable foreign mail systems and issues with retrieving and translating foreign records, among other things. From fiscal years 2013 through 2018, VA received disability compensation claims from 26,858 veterans living abroad and awarded over \$85 million in benefits, according to VA data.⁵¹

According to VA officials, VA's processing time for health care claims reimbursements to veterans or their medical providers for treatment of service-connected conditions through FMP has also improved. For example, in October 2018, FMP was processing 53.8 percent of claims in 40 days compared to 70 percent of claims in 40 days in March 2019.⁵² However, as of March 2019, VA was not meeting its timeliness goal to process 90 percent of claims reimbursements through FMP in 40 days. FMP officials attributed these delays to the loss of four staff positions in April 2017, as well as FMP assuming responsibility for claims from the Philippines in October 2017. To improve FMP's processing timeliness,

⁵⁰VA's timeliness goal for both foreign and domestic claims is 125 days. We have previously reported on issues related to the reliability of VA's timeliness goals. Specifically, in October 2018, we recommended that VA develop and implement a new regional office performance measure that allows it to better assess each regional office's timeliness over a period of time. VA concurred with the recommendation and said they are working to develop and implement a new performance measure. See [GAO-19-15](#).

⁵¹For the purposes of this report, we are referring to disability compensation claims from veterans living abroad as the total number of veterans living abroad submitting a disability claim to VA, and refer to claims awards as the sum total net amount veterans living abroad received in claims where VA identified an award from fiscal years 2013 through 2018. As noted, from fiscal years 2013 through 2018, VA received over 8.9 million disability compensation claims from over 3.9 million veterans living in the United States and abroad, and awarded over \$20.2 billion in benefits, according to VA data.

⁵²In October 2018, FMP processed reimbursements in an average of 72 days and as of March 2019 FMP processed reimbursements in an average of 58 days.

FMP officials stated that VA funded three new full-time equivalent positions for fiscal year 2019. From fiscal years 2013 through 2018, VA reported receiving 373,916 claims reimbursements from veterans and providers living abroad and awarding over \$169 million in claims reimbursements.⁵³

Scheduling and Quality of C&P Exams

According to both VA and VSO officials, veterans living abroad, including removed veterans, face challenges related to the scheduling and quality of C&P exams. As previously noted, veterans living abroad do not receive C&P exams from VA medical providers, but may receive exams from either a VA contractor or, in countries where VA does not have contractors, from a private provider scheduled by the U.S. embassy or consulate. From fiscal years 2013 through 2018, VA completed over 27,000 exams abroad through contractors and 6,800 exams through U.S. embassies and consulates, according to VA data.⁵⁴

For contract exams, as of March 2019, VA had contractors in 33 countries and U.S. territories. This included Mexico, Germany, Belize, Canada, the Dominican Republic, the Federated States of Micronesia, the United Kingdom, the Philippines, Thailand, Costa Rica, Korea, and Poland, which were among the most common countries of nationality for removed veterans in our analysis. VA officials stated that contract C&P exam locations are determined by historical and pending claims data. Moreover, VA contractors abroad are generally located near military installations or areas in which VA determined there is a large veteran population.

For embassy-scheduled exams, both VA and VSO officials told us that the effectiveness of coordination between VA and the embassies varies by country. For example, VA staff told us that they have been unable to schedule exams through embassies in Iraq or Afghanistan. State officials

⁵³For the purposes of this report, we are referring to claims reimbursements from veterans and providers abroad as the total number of claims reimbursements submitted to FMP for payment to either a provider or a veteran abroad, and refer to claims reimbursements awards as the total amount paid by payment date to providers and veterans from fiscal years 2013 through 2018.

⁵⁴We define the number of contract exams completed abroad as the number of exams completed by contractors outside the continental United States from fiscal years 2013 through 2018. We define exams through embassies as exams scheduled by State personnel and paid for through FMP from fiscal years 2013 through 2018. Veterans may also complete multiple exams for a disability compensation claim.

told us that processes for scheduling C&P exams and communicating with VA vary depending on the location, activity, and size of the embassy or consulate. State officials also told us that access to specialized providers to conduct exams, including mental health or audio exams, depends on the location of the embassy or consulate.

In addition, both VA and VSO officials told us that veterans who receive embassy-scheduled exams from private providers abroad may receive lower-quality exams than veterans who live in the United States. For example, providers abroad may misinterpret VA exam requirements due to language barriers or unfamiliarity with U.S. medical terminology. These providers also do not have access to veterans' service records, and therefore cannot assess whether a particular condition is service-connected. For these reasons, VA officials told us that VA staff submit C&P exams completed by private providers abroad to the VA Medical Center in Pittsburgh, Pennsylvania for an additional medical opinion. According to VA officials, VA is improving the scheduling and quality of C&P exams by expanding the number of countries where veterans may receive exams from VA contractors.⁵⁵

Veterans Living Abroad Face Challenges Communicating with VA

According to VA and VSO officials, veterans living abroad experience challenges communicating with the VA. For example, staff from all four VSOs we interviewed stated that unreliable foreign mail systems and differences in time zones make it challenging for veterans to communicate with the VA, particularly because VA uses paper mail to communicate with veterans living abroad. In addition, VA and VSO officials also told us that veterans living abroad may face challenges applying for and managing their benefits through an online portal maintained by VA and DOD, eBenefits. VA requires veterans to register for a "premium account" in order to access all of the functions of eBenefits, such as applying for benefits online and checking the status of a claim, among other things. To be eligible for a "premium account," veterans must first verify their identity with DOD. If the veteran provides valid government identification (e.g. driver's license) and documentation of a financial account (e.g. checking account), DOD may be able to verify

⁵⁵We have additional ongoing work examining the quality of C&P exams for veterans living abroad.

the veteran's identity through an online registration process and VA may be able to verify the veteran's identity by telephone. If a veteran is unable to verify their identity in this manner, the veteran must verify their identity in-person at a VA regional office in the United States. Therefore, removed veterans who cannot travel to the United States would not be able to obtain a "premium account" if they had not previously registered prior to their removal. VA officials stated that these processes are intended to ensure compliance with National Institute of Standards and Technology guidance for online credentialing.

Conclusions

Throughout U.S. history, noncitizens have contributed to the United States through service in the Armed Forces. Through its policies, ICE has established that these noncitizen veterans warrant special consideration in the event that they become subject to immigration enforcement and removal from the United States. However, because ICE did not consistently adhere to these policies, some veterans who were removed may not have received the level of review and approval that ICE has determined is appropriate for cases involving veterans. Moreover, without developing and implementing a new policy or revising its 2004 and 2015 policies to require ICE agents and officers to ask about and document veteran status while interviewing potentially removable individuals, ICE has no way of knowing whether it has identified all of the veterans it has encountered and, therefore, does not have reasonable assurance that it is consistently implementing its policies and procedures for handling veterans' cases. Further, maintaining complete electronic data on veterans it encounters would also allow ICE to better assess whether ICE has adhered to its policies for handling cases involving potentially removable veterans.

Recommendations for Executive Action

We are making the following three recommendations to ICE:

- The Director of ICE should take action to ensure consistent implementation of ICE's policies for handling cases of potentially removable veterans. (Recommendation 1)
- The Director of ICE should develop and implement a policy or revise its current policies to ensure that ICE agents and officers identify and

document veteran status when interviewing potentially removable individuals. (Recommendation 2)

- The Director of ICE should collect and maintain complete and electronic data on veterans in removal proceedings or who have been removed. (Recommendation 3)

Agency Comments and Our Evaluation

We provided a copy of this report to DHS, VA, DOD, and State for review and comment. DHS provided written comments, which are reproduced in full in appendix I and discussed below. DHS, VA, and DOD also provided technical comments, which we incorporated as appropriate. State indicated that it did not have any comments on the draft report.

In its comments, DHS concurred with our three recommendations and described actions planned to address them. With respect to our first recommendation that ICE should ensure consistent implementation of its policies for handling potentially removable veterans, DHS concurred stating that ICE plans, among other things, to update its guidance and training materials to include information about military service. With respect to our second recommendation that ICE should develop and implement a policy or revise its current policies to ensure agents and officers identify and document veteran status when interviewing potentially removable individuals, DHS concurred, stating that ICE plans to review and clarify existing guidance on the issuance of NTAs to veterans. DHS also concurred with our third recommendation that ICE collect and maintain complete and electronic data on veterans in removal proceedings or who have been removed. Specifically, DHS stated that ICE plans to add data elements for veteran status to its existing systems. The actions described above, if implemented effectively, should address the intent of our recommendations.

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

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

Rebecca Gambler

Rebecca Gambler
Director
Homeland Security and Justice

Appendix I: Comments from the Department of Homeland Security

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



**Homeland
Security**

May 15, 2019

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

Re: Management Response to Draft Report GAO-19-416, "IMMIGRATION
ENFORCEMENT: Actions Needed to Better Handle, Identify, and Track Cases
Involving Veterans"

Dear Ms. Gambler:

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

The Department is pleased to note GAO's acknowledgement that U.S. Immigration and Customs Enforcement (ICE) recognizes noncitizen veterans warrant special consideration in the event that they become subject to immigration enforcement and removal from the United States. DHS and ICE are focused on smart and effective enforcement of U.S. immigration laws. This includes prioritizing the identification and removal of criminal aliens who pose a threat to national security and public safety, such as those with prior criminal convictions. For example, in 100 percent of the veteran case files GAO reviewed, the individuals were placed into removal proceedings because of felony convictions related to drugs; sexual abuse, of which 18 involved minors; firearms, explosives, or explosive material; kidnapping; and terrorist threats.

The draft report contained three recommendations with which the Department concurs. Attached find our detailed response to each recommendation. Technical comments were previously provided under separate cover.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Sincerely,



JIM H. CRUMPACKER, CIA, CFE
Director
Departmental GAO-OIG Liaison Office

Attachment

**Attachment: Management Response to Recommendations
Contained in GAO-19-416**

GAO recommended that the Director of ICE:

Recommendation 1: Take action to ensure consistent implementation of ICE's policies for handling cases of potentially removable veterans.

Response: Concur. To ensure consistent implementation of ICE's existing policies for handling cases of potentially removable aliens who are veterans of military service, ICE Enforcement and Removal Operations (ERO) and Homeland Security Investigations (HSI) will update its officer and agent training to include lesson plans and practice exercises related to veteran status. ICE ERO and HSI will also issue a broadcast message reminding the field of existing guidance.

Additionally, ICE ERO will update its guidance on questions that ERO Officers ask when completing Form I-213, Record of Deportable/Inadmissible Alien, to include information about military service and will continue to use its checklist of factors to consider in cases when processing detainees who have military service. Also, the system enhancements identified in the response to Recommendation 3 will improve data entry standardization of veteran information within ICE systems. These collective actions will aid ICE to better ensure that potentially removable aliens who are veterans receive the appropriate levels of review and consideration prior to the initiation of removal proceedings. Estimated Completion Date (ECD): May 30, 2020.

Recommendation 2: Develop and implement a policy or revise its current policies to ensure that ICE officers and agents identify and document veteran status when interviewing potentially removable individuals.

Response: Concur. The ICE Office of Policy and Planning, in consultation with ICE's Office of the Principal Legal Advisor (OPLA), ERO, and HSI, will review and clarify existing ICE guidance on the issuance of Notices to Appear (NTAs) for aliens with United States military service to properly capture veteran status information. The revised guidance will address the authority to approve issuance of an NTA by an HSI Special Agent in Charge and ERO Field Office Director and the documentation required to be included in the alien (A)-file. The revised guidance will also provide instructions for ICE officers and agents charged with processing aliens with NTAs to inquire about veteran status during the initial encounter in order to appropriately identify and document veteran status when interviewing potentially removable individuals. ECD: May 30, 2020.

Recommendation 3: Collect and maintain complete and electronic data on veterans in removal proceedings or who have been removed.

Response: Concur. ICE will analyze the systems used by ICE officers and agents when processing an alien with veteran status to gather the requirements. Specifically, ICE HSI will add data elements to its Investigative Case Management System to appropriately capture veteran status and will transmit the data to ERO ENFORCE Alien Removal Module (EARM) electronically. In addition, ICE ERO will enhance EARM by adding data elements for veteran status and will augment the data feed to OPLA's case management system, Principal Legal Advisor Net, to include the veteran information. This will in turn automate the data on veterans in removal proceedings across the agency. This effort will consist of the following milestones:

Milestone	Estimated Completion Date
Requirements gathering	September 30, 2019
Design	December 21, 2020
Testing (development and user acceptance)	February 28, 2021
Training	May 31, 2021
Deployment to production	June 30, 2021

System user guides, standard operating procedures, and checklists will also be updated to provide instructions to ICE officers and agents on completing the required new military service and veteran status fields. ECD: June 30, 2021.

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

Page 1

Rebecca Gambler

Director, Homeland Security and Justice

U.S. Government Accountability Office

44 I G Street, NW

Washington, DC 20548

Re: Management Response to Draft Report GAO-19-4 16, "IMMJGRA TION

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Page 2

Again, thank you for the opportunity to review and comment on this draft report. Please

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Jim H. Crumpacker

Director

Departmental GAO-OIG Liaison Office

Attachment

Page 3

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Contained in GAO-19-416

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Response: Concur.

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Estimated Completion Date (BCD): May 30, 2020.

Recommendation 2: Develop and implement a policy or revise its current policies to ensure that ICE officers and agents identify and document veteran status when interviewing potentially removable individuals.

Response: Concur.

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Page 4

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Appendix II: GAO Contacts and Staff Acknowledgements

GAO Contact

Rebecca Gambler, gablerr@gao.gov, (202) 512-8777

Staff Acknowledgments

In addition to the contact named above, Meg Ullengren (Assistant Director), Ashley Davis, Eric Hauswirth, Khaki LaRiviere, Sasan J. “Jon” Najmi, Claire Peachey, Mike Silver, Natalie Swabb, and James Whitcomb made key contributions to this report.

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