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Accessible Version

May 24, 2023

The Honorable Mark E. Green, M.D.
Chairman
Committee on Homeland Security
House of Representatives

The Honorable Clay Higgins
Chairman
Subcommittee on Border Security and Enforcement
Committee on Homeland Security
House of Representatives

DNA Collections: CBP is Collecting Samples from Individuals in Custody, but Needs Better Data for Program Oversight

The DNA Fingerprint Act of 2005 (the Act) and a subsequent regulation effective in 2009 established requirements for federal law enforcement agencies to collect DNA from individuals who are arrested, facing criminal charges or convicted, and from certain detained noncitizens.¹ Law enforcement agencies are to send DNA samples to the Federal Bureau of Investigation (FBI) for entry into the Combined DNA Index System (CODIS).² CODIS allows federal, state, and local labs to exchange and compare DNA profiles to develop investigative leads for law enforcement.

In 2020, U.S. Customs and Border Protection (CBP), within the Department of Homeland Security (DHS), began its program to collect DNA samples from individuals it arrests and detained noncitizens covered by the regulation.³ Prior to beginning its collection program, from

¹The DNA Fingerprint Act of 2005 authorizes the Attorney General to promulgate regulations for federal law enforcement agencies to collect DNA samples from two groups of individuals: (1) those arrested, facing charges, or convicted by the U.S., or (2) noncitizens, excluding lawful permanent residents, detained under the authority of the U.S. DNA Analysis Backlog Elimination Act of 2000, Pub. L. No. 106-546, § 3, 114 Stat. 2726, 2728-30, as amended by the DNA Fingerprint Act of 2005, enacted as part of the Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, title X, 119 Stat. 2960, 3084-86 (2006) (formerly classified at 42 U.S.C. § 14135a and transferred, as amended, to 34 U.S.C. § 40702).

²CODIS is the generic term used to describe the FBI's program of support for criminal justice DNA databases as well as the software used to run these databases.

³CBP may arrest and detain removable noncitizens when they are encountered at ports of entry or apprehended between ports of entry based on administrative immigration violations. CBP may also arrest any individual, including U.S. citizens, for criminal offenses, such as smuggling goods or human trafficking. Prior to beginning its DNA collection program in 2020, CBP sent a small number of DNA samples to the FBI. CBP's program intended to collect DNA from all covered individuals CBP arrests or detains began in 2020. According to CBP officials, only individuals

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2010 until 2020, the Secretary of Homeland Security and the Attorney General agreed to exempt DHS component agencies, including CBP, from the regulatory requirement to collect DNA from certain noncitizens detained by DHS. This exemption was due to the resources that would be needed to collect those samples.⁴ However, the requirement to collect DNA from those arrested for federal criminal offenses remained in place.⁵

In March 2020, the Department of Justice (DOJ) updated the regulation regarding DNA collection from detained noncitizens. It removed the exemption that had allowed DHS to not collect DNA samples from certain noncitizens for whom such collection is not feasible due to operational exigencies or resource limitations.⁶ As of March 2020, DNA collection may be limited to those individuals from whom the agency collects fingerprints, and may be subject to other limitations or exceptions approved by the Attorney General.⁷

You asked us to examine CBP's implementation of the DNA Fingerprint Act of 2005. This report assesses CBP's processes for collecting DNA from individuals and the status of CBP's collection program.

To address our objective, we reviewed CBP's policies and procedures for DNA collection, such as CBP's directive on sample collection for CODIS and instructions for collecting and recording sample collection.⁸ We also interviewed officials from CBP's Office of Field Operations (OFO) and U.S. Border Patrol headquarters and selected field locations. These locations included OFO's Buffalo, San Diego, and Laredo field offices, as well as Border Patrol's Swanton, Del Rio, and Rio Grande Valley sectors. We selected locations along both the northern and southern

subject to CBP's immigration enforcement authority may have their DNA collected and CBP did not collect DNA from individuals it expelled from the country under Title 42 public health authority, which expired on May 11, 2023.

⁴According to CBP data, during that time the agency encountered hundreds of thousands of individuals annually who would have been potentially subject to DNA collection. In addition, the process for submitting fingerprints and biographical data to the FBI was paper-based prior to 2018, which, according to CBP officials, made DNA collection operationally infeasible. CBP collaborated with the FBI to develop a mechanism to electronically submit fingerprints and biographical data, which reduced the time required to complete a DNA collection, according to CBP officials.

⁵In May 2021, the DHS Office of Inspector General (OIG) reported on DHS components' collections of DNA from individuals they arrested. The OIG found that some DHS components, including CBP, did not collect DNA samples from individuals they arrested for criminal offenses when they were required to do so. It recommended that DHS ensure that CBP, among other components, fully implement DNA collections for individuals arrested by DHS law enforcement components as well as detained noncitizens. DHS concurred with these recommendations. Department of Homeland Security, Office of the Inspector General, *DHS Law Enforcement Components Did Not Consistently Collect DNA from Arrestees*, [OIG-21-35](#) (Washington, D.C.: May 2021).

⁶28 C.F.R. § 28.12.

⁷In addition, according to the regulation, unless provided by the Secretary of Homeland Security, DNA sample collection requirements for noncitizen detainees generally will not include: (1) noncitizens lawfully present in or being processed for lawful admission to the U.S., (2) noncitizens held at a port of entry for consideration of admissibility without further detention or proceedings; or (3) noncitizens held as a result of maritime interdiction. Also, according to the 2020 final rule amending the DNA collection regulation, the removal of DHS's exemption authority for operational exigencies or resource limitations does not preclude limitations and exceptions to address such situations provided they are approved by the Attorney General. DNA-Sample Collection From Immigration Detainees, 85 Fed. Reg. 13,483, 13,484 (Mar. 9, 2020) (codified at 28 C.F.R. pt. 28).

⁸Department of Homeland Security, U.S. Customs and Border Protection, *DNA Sample Collection for CODIS*, Directive Number 3410-001 (Dec. 30, 2020).

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U.S. borders, and those where CBP encountered the greatest number of individuals under its immigration enforcement authority.⁹ The results of our interviews cannot be generalized to all CBP locations; however, the information we obtained provides valuable perspectives on the experiences of these field locations in implementing CBP's DNA collection program. We compared CBP's process for collecting and recording DNA sample collections to the agency's directive and *Standards for Internal Control in the Federal Government* and determined that the information and communication component of internal control, along with the underlying principle that management should use quality information to achieve the entity's objectives, was significant to this objective.¹⁰

We also obtained and analyzed OFO and Border Patrol data on DNA samples collected from fiscal year 2020—the year CBP began its DNA collection program—through fiscal year 2022, which was the most recent full year of data available at the time of this review. We assessed the reliability of these data by interviewing managers responsible for the data and reviewing information about OFO and Border Patrol's data systems. We found the data to be sufficiently reliable for reporting the number of CBP's DNA collections during this time period.

In addition, we analyzed FBI data on DNA samples it has received from CBP as well as the numbers of confirmed hits in CODIS resulting from DNA samples collected by CBP.¹¹ These data cover fiscal years 2020 through 2022, the most recent data available at the time of this review. We assessed the reliability of FBI's data by interviewing managers responsible for the data and reviewing information on the FBI's data system. We found the data to be sufficiently reliable for the purposes of reporting the numbers of DNA samples FBI received from CBP during this time period, as well as the percent of samples FBI rejected for failing to meet its sample integrity standards. We also interviewed officials from the FBI to obtain their perspectives on CBP's DNA collection efforts.

We conducted this performance audit from September 2022 to May 2023 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.

Background

CBP Organization and Authorities

CBP is the lead federal agency charged with a dual mission of securing our nation's borders while also facilitating the flow of legitimate travel and trade. Within CBP, OFO is responsible for operating ports of entry through which travelers are inspected for admission, and goods are

⁹We used CBP data on immigration enforcement encounters, which includes individuals OFO determined were inadmissible and individuals apprehended by Border Patrol. For both OFO field offices and Border Patrol sectors, we selected two locations on the southern border where CBP encountered the greatest number of individuals among all southern border locations. We also selected one OFO field office and one Border Patrol sector on the northern border where CBP encountered the greatest number of individuals among all northern border locations.

¹⁰GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington D.C.: September 2014).

¹¹Hits are DNA profile matches in CODIS.

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cleared for entrance into the U.S.¹² OFO field offices across the country oversee operations at the ports of entry. U.S. Border Patrol is responsible for patrolling the areas between ports of entry to detect and prevent the illegal entry of individuals and contraband into the U.S. Border Patrol divides responsibility for border security operations geographically among sectors.

CBP may arrest and detain removable noncitizens who are encountered at ports of entry or apprehended between ports of entry based on administrative immigration violations.¹³ CBP may also arrest any individual, including U.S. citizens, for criminal offenses, such as smuggling goods or human trafficking, among others.¹⁴ Both OFO and Border Patrol are responsible for collecting DNA samples from individuals they detain or arrest who are covered by the DNA collection regulation.

CBP's Policy on DNA Collections

In response to the Act and the 2020 amended regulation, CBP issued a directive on DNA sample collection in December 2020. The directive instructs OFO and Border Patrol field personnel on the agency's policy and procedures for collecting and submitting DNA samples to the FBI. In particular, the CBP directive establishes the population subject to DNA collection as individuals who are either arrested on federal criminal charges or certain noncitizens detained for immigration violations and from whom the agency collects fingerprints.¹⁵ Individuals may meet these conditions but be exempt from DNA collection if they already have a DNA profile in CODIS or for other reasons outlined in the regulation.¹⁶

¹²Ports of entry are officially designated facilities (seaports, airports or land border locations) that provide for the controlled entry into, or departure from, the U.S. At ports of entry, CBP officers are to secure the flow of people and cargo into and out of the country, while facilitating legitimate travel and trade.

¹³Removable people may have: (1) unlawfully entered the U.S. between ports of entry without inspection or at ports by means of evasion or fraud; (2) lawfully entered on a temporary basis but remained beyond their authorized period of stay; or (3) become removable for committing certain crimes (or on other statutory grounds). A noncitizen encountered at the border, or within the U.S., may be removable on statutory grounds of inadmissibility, Immigration and Nationality Act (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 U.S.), 1227(a)(1)(A) (deportability for having been inadmissible at the time of entry).

¹⁴See, e.g., 8 U.S.C. § 1357; 19 U.S.C. § 1589a.

¹⁵CBP does not categorically collect fingerprints from individuals in custody who are under age 14 and the directive states that CBP's collection for DNA submission to CODIS does not include individuals under age 14. For further information on the requirements for, and exceptions to, providing biometric identifiers upon U.S. entry and exit, see 8 C.F.R. §§ 215.8, 235.1(f)(1)(ii)-(iv).

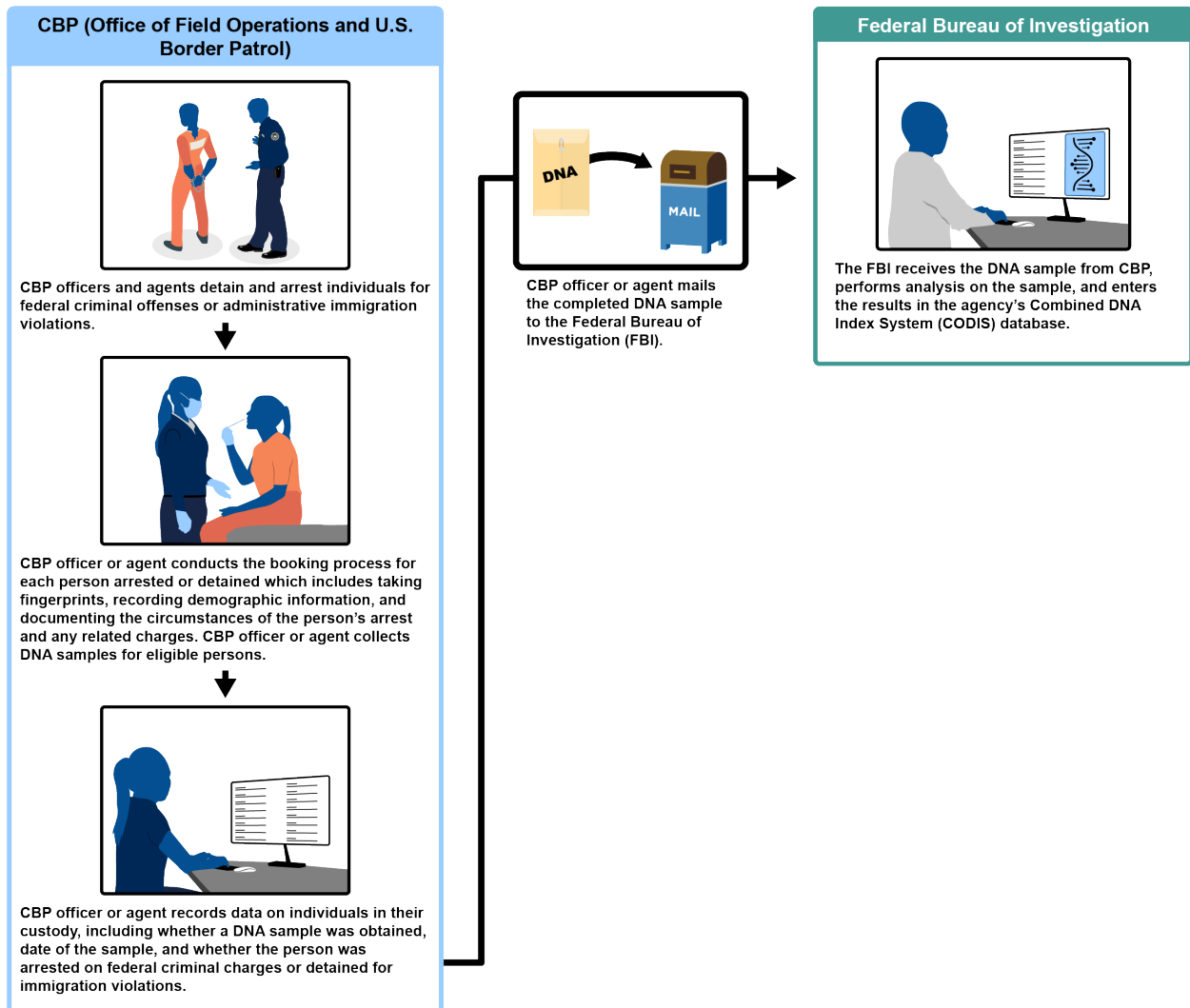
¹⁶The CBP directive states that DNA sample collection requirements for noncitizen detainees generally will not include: (1) noncitizens lawfully present in or being processed for lawful admission to the U.S., (2) noncitizens held at a port of entry for consideration of admissibility without further detention or proceedings; (3) noncitizens held as a result of maritime interdiction; (4) individuals whom CBP encounters with a warrant for a state crime and for whom there is no federal criminal or immigration activity at issue; or (5) when there is a memorandum of understanding between CBP and another agency or entity to collect the DNA sample for submission to CODIS on behalf of CBP. According to CBP officials, there are no current memoranda of understanding between CBP and another entity to collect DNA on their behalf.

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In addition, consistent with the Act and associated regulation, the CBP directive includes procedures for using DNA collection kits, recording information related to the sample collection, and submitting samples to the FBI for entry into the CODIS database. Figure 1 shows CBP's process for collecting and submitting DNA samples to the FBI.

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Figure 1: Typical Process for U.S. Customs and Border Protection (CBP) DNA Sample Collection



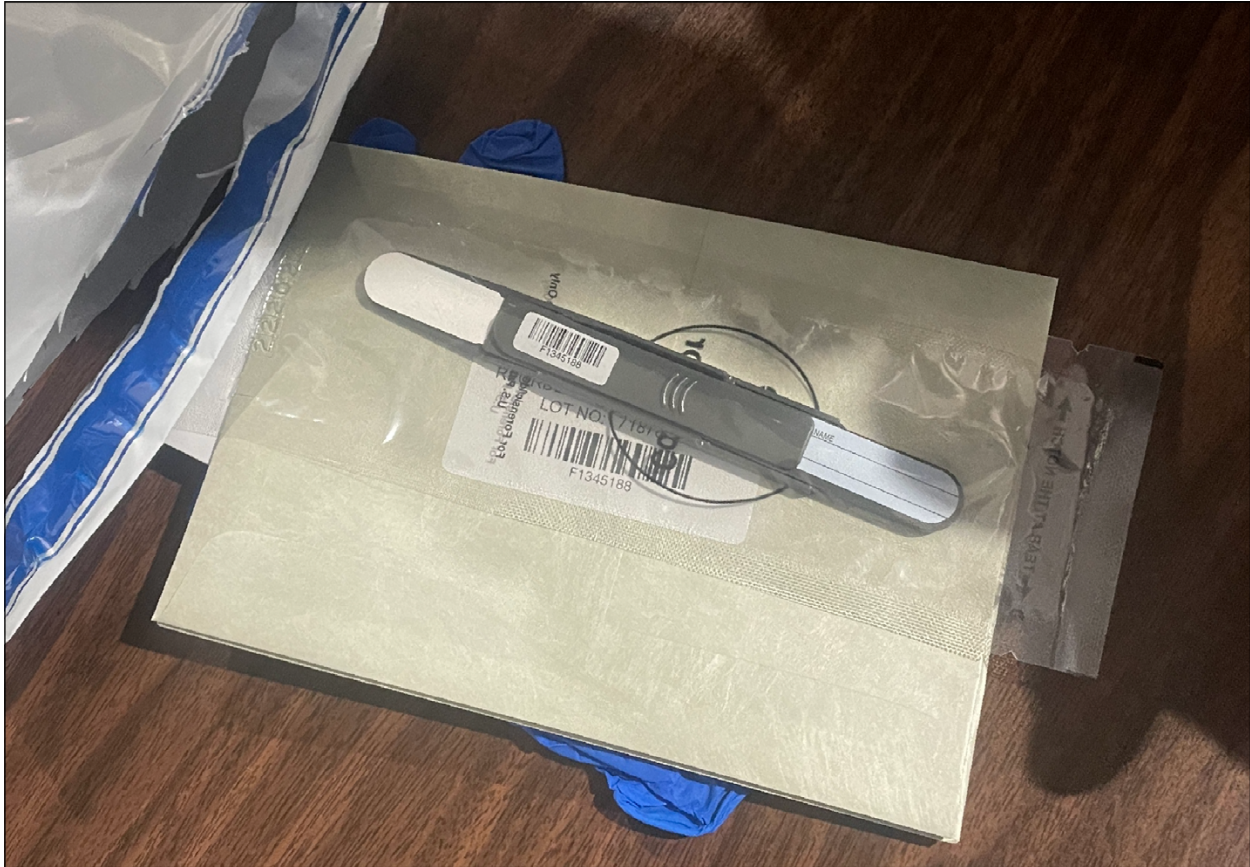
Source: GAO analysis of CBP documentation. | GAO-23-106252

DNA Sample Collection Kits

Federal law enforcement agencies collect DNA samples using buccal (cheek) collection devices (see figure 2). FBI staff use CODIS to compare known DNA profiles collected by law enforcement to DNA profiles from samples collected from unknown sources such as those obtained at crime scenes, related to missing persons, and unidentified human remains. DNA profile hits from CODIS generate investigative leads for law enforcement.

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Figure 2: Example of a Buccal (Cheek) DNA Collection Device



Source: CBP | GAO-23-106252

CBP Collects DNA Nationwide but Lacks Data to Effectively Assess and Oversee Its Program

CBP Has Implemented a Nationwide DNA Collection Program

CBP initiated a pilot program in January 2020 at two field locations (one each for OFO and Border Patrol) to collect DNA from individuals it arrested on federal charges and certain noncitizens it detained.¹⁷ Subsequently, CBP expanded its DNA collection program, collecting samples nationwide by December 2020. Our analysis of OFO and Border Patrol data shows that DNA collections continued to increase through fiscal year 2022 (see enclosure 1 for data on DNA collections by fiscal year and location).

Specifically, OFO and Border Patrol data show that they collected and submitted to the FBI for entry into CODIS 5,641 DNA samples in fiscal year 2020; 330,357 in fiscal year 2021; and 634,422 in fiscal year 2022.¹⁸

¹⁷These two field locations were OFO's Eagle Pass (TX) port of entry and the Border Patrol's Detroit sector.

¹⁸These data reflect the number of DNA samples CBP collected, not the number of individuals from whom CBP collected DNA samples. CBP may have collected DNA samples from the same person more than once, according to CBP officials. This is due to the time it takes for the FBI to add DNA profiles to CODIS for the samples it receives.

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OFO and Border Patrol headquarters officials monitor these DNA collections, according to CBP officials. Border Patrol maintains a DNA dashboard that includes demographic information on individuals from whom agents collected DNA samples. OFO headquarters officials stated they review data on the numbers of DNA samples collected at OFO field offices and ports of entry.

OFO and Border Patrol have training materials covering the process CBP officers and Border Patrol agents are to follow to carry out and record DNA collections. These materials include instructions on the population subject to DNA collections, use of the DNA collection kits to obtain samples, and proper completion of paperwork associated with the DNA collection. According to OFO and Border Patrol program officials, they have used these materials to provide training to all field locations on how to carry out DNA collections. According to FBI officials, they have not rejected many samples from CBP for failing to meet FBI standards for entry into CODIS.¹⁹ FBI data show that the agency discarded less than 4 percent of samples received from CBP from fiscal years 2020 through 2022 because they did not meet the FBI's integrity standards for DNA samples.²⁰

According to FBI data, CBP's DNA samples have resulted in hits in CODIS. Specifically, CBP's DNA samples have led to 227 confirmed hits in CODIS during the time period of our analysis—five in fiscal year 2020, 59 in fiscal year 2021, and 163 in fiscal year 2022. Law enforcement agencies may use information from a CODIS hit when investigating a crime.

CBP and FBI Are Taking Steps to Address DNA Kit Shortages

CBP has experienced challenges with DNA collection kit shortages, which has resulted in CBP officers and agents not collecting DNA from some individuals subject to DNA collection. CBP and FBI are taking steps to resolve the issue and ensure there is a sufficient supply of kits in the future.

According to Border Patrol officials, at times some field locations have not collected DNA from individuals in their custody who meet the collection criteria due to a lack of DNA collection kits. Specifically, Border Patrol officials from both southwest border sectors we spoke to noted ongoing issues with shortages of DNA collection kits, resulting in an insufficient number of kits to collect DNA from all individuals covered by the DNA collection regulation.²¹ Border Patrol

According to FBI officials, this process may take several months, during which CBP would continue to collect DNA samples each time it encountered an individual. In addition, potential problems with collection or submission may make a sample unusable by the FBI.

¹⁹The FBI's integrity standards consist of a list of both physical and data integrity standards which, if not met, would require a sample to be rejected. Reasons for rejection include a broken or missing seal on the kit package, an undecipherable name on the DNA sample, or a mismatched barcode between the DNA sample and the collection device form in the kit, among other reasons.

²⁰FBI data show that the agency received approximately 5,000 samples from CBP in fiscal year 2020, 320,000 in fiscal year 2021, and 601,000 in fiscal year 2022. According to FBI and CBP officials, the number of samples FBI data show as received from CBP may differ from the numbers of samples CBP collected for various reasons including timing of when FBI records the samples as received, in addition to time required for the FBI lab to process the samples and upload data into CODIS. FBI maintains data on the number of samples that have been rejected or are pending rejection. As of January 2023, FBI data showed that of the samples they received from CBP, 3.5 percent of samples in fiscal year 2020, 2.7 percent in 2021, and 3.5 percent in 2022 were rejected or pending rejection.

²¹According to CBP data, in fiscal years 2021 and 2022, these two Border Patrol sectors were the top two sectors nationwide for the number of individuals encountered and processed by Border Patrol personnel.

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officials we spoke with in the Del Rio and Rio Grande Valley sectors added that these kit supply shortages are most acute during peak periods for border crossings. According to OFO officials, field locations within OFO have also experienced DNA collection kit shortages, though less frequently than Border Patrol.

Both OFO and Border Patrol field locations order supplies of DNA kits from the FBI using an online order form. This order form has options to order up to 1,000 kits at a time. According to Border Patrol officials, the FBI has informed them that they may note in the comments section of this form that they need orders larger than 1,000 kits (up to a maximum of 3,000 kits). However, officials told us they do not always receive the number of kits that they order from the FBI beyond the 1,000-kit limitation on each order form.²²

According to FBI officials, CBP's demand for DNA collection kits has at times led to limitations in the supply of kits available. To address this issue, FBI officials stated that they received approximately \$8 million in additional funding in fiscal year 2023 to increase the supply of collection kits and processing capacity. The agency has also requested additional annual funding to increase capacity for supplying and processing DNA samples beginning in fiscal year 2024, according to FBI officials. FBI officials anticipate that the additional funding in fiscal year 2023 as well as the requested funding beginning in fiscal year 2024, would enable them to provide enough DNA sample collection kits to meet CBP's demand for kits.

CBP has also taken steps to improve information sharing with the FBI regarding its demand for DNA kits. FBI officials told us that limited visibility into the drivers of CBP's demand for DNA collection kits has been a challenge for FBI planning efforts. OFO and Border Patrol headquarters officials stated that they have discussed kit shortages with FBI officials. In addition, Border Patrol officials stated they have requested that the FBI receive access to CBP's Unified Immigration Portal which provides near real-time information collected by immigration agencies, including CBP. According to Border Patrol officials, access to the Unified Immigration Portal will provide the FBI visibility into trends in the numbers of individuals CBP encounters who are subject to DNA collection so that the FBI might be better prepared to provide kits during these periods.

CBP Does Not Have Data to Fully Assess DNA Program Efficiency and Effectiveness

OFO and Border Patrol officials collect and monitor data on the numbers of DNA collections across their respective field locations. However, OFO and Border Patrol are not systematically collecting data on the reasons why they do not collect DNA from some individuals arrested or detained under CBP's immigration enforcement authority. This makes it difficult for them to fully assess and oversee the DNA program's efficiency and effectiveness.

There are a number of reasons why OFO and Border Patrol may not collect DNA from an individual in their custody. These reasons may include situations where the individual is not

²²According to FBI officials, there are no limitations on how frequently CBP field sites may place orders for DNA collection kits. However, FBI does not guarantee that agencies will receive the number of kits ordered. Specifically, according to the FBI's DNA collection kit ordering website as of March 2023, the number of DNA collection kits provided per order may be reduced to ensure that the current kit supply remains available for all participating agencies. According to FBI officials, they were also not able to fulfill some of CBP's DNA collection kit orders in the summer of 2021 due to an FBI funding shortfall and supply chain challenges. In addition, periodically when CBP has placed large orders exceeding 5,000 kits, the FBI has reduced the orders to ensure all agencies were able to receive kits, according to FBI officials.

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subject to DNA collection—such as being under the age of 14, being the subject of a maritime interdiction, or CODIS already having a DNA sample for the individual. There are also other situations where an individual was otherwise covered by the regulation but the sample was not collected, according to CBP officials. Such situations include when an OFO or Border Patrol field location does not have enough DNA kits to obtain DNA samples from all covered individuals, as previously discussed.

However, because OFO and Border Patrol do not systematically collect data on why their officers and agents may not obtain DNA from an individual in custody, they do not know the extent to which all covered individuals processed at OFO and Border Patrol locations nationwide have had their DNA samples collected. In fiscal year 2022, of the nearly 1.7 million individuals encountered by OFO and Border Patrol under their immigration enforcement authority, the agencies collected DNA samples from about 634,000 of these individuals, or 37 percent.²³ While some of the individuals encountered by OFO and Border Patrol were not covered by the regulation, the agencies cannot readily determine the extent to which these non-collections were appropriate and valid because they do not systematically record data on the reasons for the non-collections.

OFO and Border Patrol officials stated that their respective data systems do not have a specific data field on reasons why DNA was not collected. In the absence of such data, to determine the reason why an officer or agent did not obtain a DNA sample for a certain individual, OFO or Border Patrol personnel would have to research available information on the individual's case, such as looking in a narrative field in their agency's data system. In some cases, the available information might indicate why OFO or Border Patrol did not collect DNA (such as if the individual was younger than 14). However, in other cases, there may not be readily-available information on why OFO or Border Patrol did not collect a sample. For example, per the CBP directive and consistent with regulation, OFO and Border Patrol officials are not required to collect a DNA sample if an individual already has a DNA sample in CODIS.²⁴ OFO and Border Patrol headquarters officials noted that officers and agents may record this information in a narrative field in their data systems, but they are not required to do so. Given these data limitations, OFO and Border Patrol officials acknowledged it would be impractical and time-consuming to conduct this type of research for all individuals OFO and Border Patrol processed without a DNA collection.

According to a senior OFO program official, OFO does not currently have a mechanism or specific data field in the agency's data system on reasons why DNA was not collected. However, this official stated that the agency has discussed ways to systematically capture these data, such as adding a drop down menu that allows OFO officers to select the appropriate reason an individual's DNA is not being collected from a variety of options provided. The program official noted that systematically collecting this information is necessary for quality assurance and program oversight efforts. However, as of March 2023, OFO had not added this capability to its data systems because OFO management had not yet approved this process change. In contrast, Border Patrol officials stated that they have not considered collecting these

²³The 1.7 million individuals OFO and Border Patrol encountered in fiscal year 2022 do not include individuals expelled from the country under the Title 42 public health authority.

²⁴28 C.F.R. § 28.12(f)(3).

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data because there is not currently a CBP policy requirement to do so and they do not see the benefit for their agents in the field.

CBP's 2020 directive for DNA sample collection states that the agency will continue to develop and maintain appropriate mechanisms to evaluate the effectiveness and efficiency of CODIS DNA sample collection processes and compliance. In addition, *Standards for Internal Control in the Federal Government* states that management should use quality information to achieve the entity's objectives.²⁵ Systematically collecting data on the reasons why officers and agents have not collected DNA samples from individuals arrested on federal criminal charges or certain noncitizens detained for immigration violations would enable OFO and Border Patrol to better assess their DNA program's efficiency and effectiveness. Specifically, these data would allow OFO and Border Patrol to determine the extent that they are complying with CBP's directive, as well as DOJ's regulation implementing the Act.

Conclusions

CBP has collected nearly 1 million DNA samples from individuals in its custody since its DNA collection program began in fiscal year 2020, for submission to the FBI for entry into the CODIS database. CBP data show that the program is operational nationwide at all field locations; however, CBP could improve some aspects of data collection for the program. Specifically, while OFO and Border Patrol officials collect and monitor data on the numbers of DNA collections across their respective field locations, OFO and Border Patrol do not have data to fully assess and oversee the program's efficiency and effectiveness. Systematically collecting data on the reasons why officers and agents have not collected a DNA sample would enable OFO and Border Patrol to determine the extent that they are obtaining DNA from individuals subject to the regulation. Further, collecting these data and making this determination would allow CBP to better assess the efficiency and effectiveness of the program.

Recommendations for Executive Action

We are making the following two recommendations to CBP:

The Executive Assistant Commissioner of OFO should develop and implement a mechanism to systematically collect data on the reasons why officers are not collecting DNA from individuals arrested on federal criminal charges or certain noncitizens detained for immigration violations.

(Recommendation 1)

The Chief of the Border Patrol should develop and implement a mechanism to systematically collect data on the reasons why agents are not collecting DNA from individuals arrested on federal criminal charges or certain noncitizens detained for immigration violations.

(Recommendation 2)

Agency Comments

We provided a draft of this report to DHS and DOJ for review and comment. DHS provided written comments, which are reprinted in enclosure II and summarized below. In its comments, DHS concurred with our two recommendations and described planned actions to address them. DHS also provided technical comments, which we incorporated as appropriate. DOJ had no formal written comments on the report, but provided technical comments that we incorporated as appropriate.

²⁵[GAO-14-704G](#).

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

If you or your staff have any questions about this report, please contact me at (202) 512-8777 or gablerr@gao.gov. 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 major contributions to this report include Adam Hoffman (Assistant Director), Mara McMillen (Analyst-in-Charge), Mike Harmond, Ben Crossley, Suzanne Kaasa, Hayden Huang, Sasan J. "Jon" Najmi, Kevin Reeves, Kim Seay, and Kevin Walsh.

A handwritten signature in black ink that reads "Rebecca Gambler". The signature is written in a cursive, flowing style.

Rebecca Gambler,
Director, Homeland Security and Justice

Enclosures - 2

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Enclosure I: DNA Sample Collections by U.S. Customs and Border Protection (CBP) Field Locations

Within CBP, both the Office of Field Operations (OFO) and U.S. Border Patrol field locations collected DNA samples from fiscal years 2020 through 2022. Regarding OFO, data indicate that its officers were collecting data in all 20 of its field locations by fiscal year 2021—the year after the program began (see table 1).

Table 1: DNA Sample Collections by the Office of Field Operations (OFO), by Field Location, for Fiscal Years (FY) 2020 through 2022

OFO Field Office	FY2020	FY2021	FY2022
Atlanta	0	1,864	1,736
Baltimore	1	487	722
Boston	0	572	2,340
Buffalo	0	881	4,409
Chicago	5	2,692	3,563
Detroit	0	650	1,602
El Paso	4	4,171	7,915
Houston	2	5,826	5,899
Laredo	884	10,693	36,594
Los Angeles	0	3,748	3,778
Miami	8	4,241	5,050
New Orleans	0	6	42
New York	13	2,050	2,972
Portland	1	291	295
San Diego	3	11,577	30,624
San Francisco	0	2,293	2,521
San Juan	0	1,088	1,685
Seattle	0	2,519	4,164
Tampa	4	145	330
Tucson	7	1,982	2,832
Preclearance	1	8	12
Total	933	57,784	119,085

Source: GAO analysis of OFO data. | GAO-23-106252

Regarding Border Patrol, data indicate its agents were collecting data in all twenty of its field locations by fiscal year 2021 (see table 2).

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Table 2: DNA Sample Collections by U.S. Border Patrol, by Field Location, for Fiscal Years (FY) 2020 through 2022

Border Patrol Sector	FY2020	FY2021	FY2022
Big Bend	264	3,045	4,264
Blaine	0	15	296
Buffalo	12	76	50
Del Rio	552	59,898	151,843
Detroit	209	19	79
El Centro	0	8,186	29,451
El Paso	1,500	21,451	25,709
Grand Forks	0	73	56
Houlton	0	31	208
Havre	0	3	24
Laredo	552	5,571	4,157
Miami	0	939	3,443
New Orleans	0	191	279
Rio Grande Valley	1,589	81,019	69,131
Ramey	2	578	1,521
San Diego	12	17,084	44,757
Spokane	2	41	58
Swanton	12	70	577
Tucson	1	21,999	44,264
Yuma	1	52,284	135,170
Total	4,708	272,573	515,337

Source: GAO analysis of Border Patrol data. | GAO-23-106252



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Homeland
Security

May 19, 2023

Rebecca Gambler
Director, Homeland Security and Justice
U.S. Government Accountability Office
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Re: Management Response to Draft Report GAO-23-106252, "DNA Collections: CBP is Collecting Samples from Individuals in Custody, but Needs Better Data for Program Oversight"

Dear Ms. Gambler:

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

DHS leadership is pleased to note GAO's recognition that U.S. Customs and Border Protection (CBP) initiated a pilot program in January 2020 at two field locations (one each for the Office of Field Operations (OFO) and U.S. Border Patrol (USBP)) to collect DNA (Deoxyribonucleic acid) from individuals arrested on federal charges and certain noncitizens detained. GAO also noted that CBP subsequently expanded its DNA collection program, collecting samples nationwide by December 2020, and GAO's analysis shows that DNA collections continued to increase through the fiscal year 2022.

CBP continues to comply with the DNA Fingerprint Act of 2005, which established requirements for federal law enforcement agencies to collect DNA from: (1) individuals arrested, facing charges, or convicted; or (2) noncitizens detained under the authority of the United States. Specifically, CBP collects Combined DNA Index System (CODIS) DNA samples from all subjects (ages 14 – 79) processed under Title 8¹ and who are categorically fingerprinted by CBP, unless otherwise exempt, as outlined in CBP Directive 3410-001, "DNA Sample Collection for CODIS," dated December 30, 2020. This directive was redistributed to all USBP Sectors on March 14, 2023, as a reminder that agents ensure they annotate the reason why CODIS DNA samples were not

¹ 8 United States Code §1182

Enclosure II: Comments from the Department of Homeland Security

collected. The Department remains committed to CBP's mission to protect the American people and safeguard our borders while enhancing the Nation's economic prosperity, to include ensuring the safety and admissibility of goods and people entering the United States.

The draft report contained two recommendations for CBP with which the Department concurs. Enclosed find our detailed response to each recommendation. DHS previously submitted technical comments addressing several accuracy, contextual, and other issues under a separate cover for GAO's consideration.

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,

DAVID E
SCHMITT

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

Enclosure

Enclosure II: Comments from the Department of Homeland Security

Enclosure: Management Response to Recommendations Contained in GAO-23-106252

GAO recommended that the Executive Assistant Commissioner of OFO:

Recommendation 1: Develop and implement a mechanism to systematically collect data on the reasons why officers are not collecting DNA from individuals arrested on federal criminal charges or certain noncitizens detained for immigration violations.

Response: Concur. CBP OFO will work with the developers of the Unified Secondary system to implement a feature to annotate the reason when a DNA collection is not completed on individuals arrested on federal criminal charges, or for certain noncitizens detained for immigration violations. Estimated Completion Date (ECD): March 29, 2024.

GAO recommended that the Chief of the USBP:

Recommendation 2: Develop and implement a mechanism to systematically collect data on the reasons why agents are not collecting DNA from individuals arrested on federal criminal charges or certain noncitizens detained for immigration violations.

Response: Concur. USBP will implement a system change in e3 Processing to allow for collection of data on the reasons DNA was not collected from individuals arrested on federal criminal charges or certain noncitizens detained for immigration violations. By March 29, 2024, USBP will schedule this enhancement, which will be added to the backlog of e3 Processing system requirements already in development. ECD: September 30, 2024.

Enclosure II: Comments from the Department of Homeland Security

Accessible Text for Enclosure II: Comments from the Department of Homeland Security

May 19, 2023

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

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

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