



January 2024

# U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

## Improvements Needed to Workforce and Expansion Plans for Unit of Native American Law Enforcement Personnel

# GAO Highlights

Highlights of [GAO-24-106385](#), a report to congressional committees

## Why GAO Did This Study

About 62 miles of the U.S. southwest border is located on the Tohono O’odham Nation reservation, which may be vulnerable to illicit cross-border activity. The Shadow Wolves program began operations in 1974 to address the illegal smuggling of controlled substances from Mexico to the Tohono O’odham Nation reservation in Arizona. The program contributed to hundreds of arrests and the seizure of tens of thousands of pounds of drugs between 2010 and 2020, according to ICE.

The Shadow Wolves Enhancement Act, which became law in April 2022, includes a provision for GAO to assess the effectiveness of ICE’s strategy for the Shadow Wolves program. This report assesses ICE’s (1) efforts to define the program’s mission and staffing needs, (2) strategies for recruiting and retaining Shadow Wolves, and (3) planning efforts to expand the program to other tribal lands. GAO analyzed ICE human capital documents and policies and Shadow Wolves program planning documents. GAO also surveyed the eight current Shadow Wolves and visited the Tohono O’odham Nation reservation to interview ICE officials, Shadow Wolves, and tribal officials.

## What GAO Recommends

GAO is making six recommendations, including that ICE define the Shadow Wolves program’s mission, goals, and staffing needs; update its recruitment strategy to include goals and milestones; develop a succession plan to address upcoming retirements; and develop criteria for evaluating expansion locations. ICE concurred with the recommendations.

View [GAO-24-106385](#). For more information, contact Rebecca Gambler at (202) 512-8777 or [GamblerR@gao.gov](mailto:GamblerR@gao.gov).

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# U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

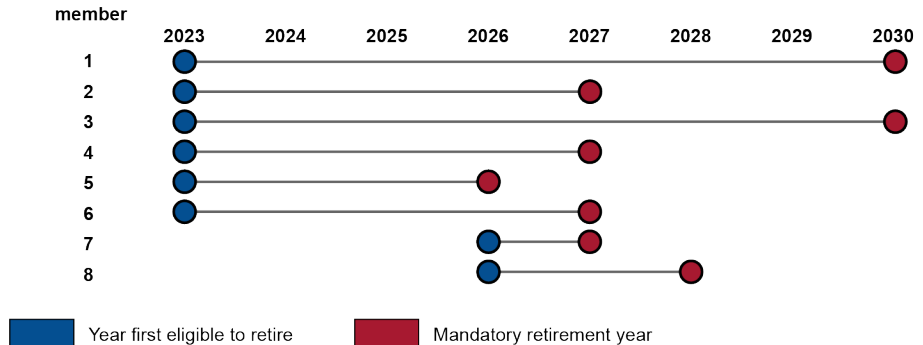
## Improvements Needed to Workforce and Expansion Plans for Unit of Native American Law Enforcement Personnel

### What GAO Found

Within U.S. Immigration and Customs Enforcement (ICE), the Shadow Wolves program operates on the Tohono O’odham Nation reservation in Sells, Arizona. Shadow Wolves members are required to have at least one-quarter American Indian ancestry. The program’s operating environment has changed in recent years due to advances in technology, an increase in federal law enforcement presence along the southwest border, and changes in smuggling tactics. As a result, in 2015, ICE shifted the program’s focus from interdiction—using traditional Indigenous tracking methods and technology to seize narcotics—to investigation, such as gathering evidence and serving warrants. However, the agency did not define the program’s mission, goals, or staffing needs after shifting its operations. Doing so would better position ICE to ensure that Shadow Wolves operations are having the desired impacts. Further, once ICE defines the mission and goals, determining the program’s staffing needs would better position ICE to develop recruitment efforts that help accomplish those goals.

In October 2022, ICE issued a strategy for recruiting additional Shadow Wolves, retaining existing Shadow Wolves, and expanding the program to other tribal lands. ICE’s strategy includes high-level recruitment methods, such as partnering with colleges and recruiting tribal law enforcement officers, but does not include goals, timelines, and milestones. Adding these elements would enable ICE to assess the effectiveness of the agency’s recruitment plans. Moreover, since the program has not hired any new employees since 2007 and most Shadow Wolves are eligible to retire, developing a succession plan would better position ICE to ensure experienced Shadow Wolves will be available to train new recruits.

**Timeline of Current Shadow Wolves’ Retirement by Fiscal Year**



Source: GAO analysis of U.S. Immigration and Customs Enforcement information. | [GAO-24-106385](#)

Note: Generally, federal law enforcement personnel must retire at age 57, or when they complete 20 years of certain specialized federal service after age 57.

ICE has outlined steps that it plans to take to evaluate possible Shadow Wolves expansion locations, including coordinating with tribal leaders, engaging with ICE field officials, and conducting site visits to assess the feasibility and appropriateness of expansion. However, ICE has not developed criteria for evaluating and selecting locations. Doing so would help ensure officials evaluate locations consistently and transparently.

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### Abbreviations

|       |  |
|-------|--|
| AUO   | Administratively Uncontrollable Overtime |
| CBP   | U.S. Customs and Border Protection       |
| DHS   | Department of Homeland Security          |
| FLETC | Federal Law Enforcement Training Centers |
| FLSA  | Fair Labor Standards Act                 |
| GS    | General Schedule                         |
| HSI   | Homeland Security Investigations         |
| ICE   | U.S. Immigration and Customs Enforcement |
| LEAP  | Law Enforcement Availability Pay         |
| OPM   | Office of Personnel Management           |

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January 30, 2024

The Honorable Gary C. Peters  
Chairman  
The Honorable Rand Paul, M.D.  
Ranking Member  
Committee on Homeland Security and Governmental Affairs  
United States Senate

The Honorable Mark E. Green, M.D.  
Chairman  
The Honorable Bennie G. Thompson  
Ranking Member  
Committee on Homeland Security  
House of Representatives

Sixty-eight miles of the United States southwest border and 86 miles of the northern border are located on American Indian reservations. Many of these border areas may be vulnerable to illicit cross-border activity. Congress established the Shadow Wolves program, which began operations in 1974, to address the illegal smuggling of controlled substances from Mexico to the Tohono O’odham Nation reservation in Arizona and into the interior of the United States.<sup>1</sup> The program’s employees—known as “Shadow Wolves”—must be certified to have at least one-quarter American Indian ancestry from a federally recognized Tribe.<sup>2</sup> The unit is part of the U.S. Immigration and Customs Enforcement’s (ICE) Homeland Security Investigations (HSI) office in Sells, Arizona—the capital of the Tohono O’odham Nation.

The Tohono O’odham Nation has faced challenges due to an increase in migrant and transnational criminal organization activity on the reservation in recent years, according to Tohono O’odham Nation officials. For

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<sup>1</sup>According to U.S. Immigration and Customs Enforcement (ICE), an act of Congress created the Shadow Wolves program in 1972, and on April 14, 1974, the U.S. Customs Service swore in the first seven Shadow Wolves.

<sup>2</sup>2021 Excepted Service; Consolidated Listing of Schedules A, B, and C Exceptions, 87 Fed. Reg. 52042, 52046 (Aug. 24, 2022) (Sch. A, 213.3111(e)). During years of negotiation with the U.S. Customs Service, the Tohono O’odham Nation government sought the resulting American Indian ancestry requirement. Dating back to 1974, the program’s hiring authority has required that the program hire persons with one-fourth or more “Indian blood.” For the purposes of this report, we refer to this language as requiring persons of American Indian ancestry.

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example, Tohono O’odham Nation officials estimate that about 200 noncitizens per month crossed into the reservation from Mexico in the 1990s. According to U.S. Border Patrol data, Border Patrol encountered about 3,400 noncitizens on the reservation per month in fiscal year 2022.<sup>3</sup> As a result, Tohono O’odham Nation officials stated that in recent years the Tohono O’odham Police Department has spent about 50 percent of its time on border-related issues. The officials also cited negative effects of transnational criminal organizations on the reservation, including smugglers holding families hostage, damaging or stealing property, and recruiting tribal youth to engage in smuggling activity.

The Shadow Wolves Enhancement Act, which became law in April 2022, required the Department of Homeland Security (DHS) to submit a strategy for the Shadow Wolves program to the Committee on Homeland Security and Governmental Affairs of the Senate, Committee on Homeland Security of the House of Representatives, and GAO, not later than 90 days after enactment. Specifically, the act required a strategy for retaining existing Shadow Wolves, recruiting new Shadow Wolves, and expanding comparable units to appropriate areas near the northern or southwest borders with the approval and consent of the appropriate Tribe.<sup>4</sup> DHS submitted its Shadow Wolves Enhancement Act strategy in October 2022.

The act includes a provision for GAO to assess the effectiveness of DHS’s strategy and provide recommendations for improvements to the strategy.<sup>5</sup> This report assesses (1) ICE’s efforts to define the mission of

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<sup>3</sup>Border Patrol encounters for fiscal year 2022 include both Title 8 apprehensions and Title 42 expulsions. Title 8 apprehensions are immigration enforcement actions processed under U.S. Customs and Border Protection’s (CBP) immigration authority in Title 8 of the U.S. Code. Title 42 expulsions refer to individuals encountered by Border Patrol and expelled to the country of last transit or home country in the interest of public health under section 265 of Title 42 of the U.S. Code. Border Patrol officials said that the agency tracks encounters on the Tohono O’odham Nation reservation by filtering geo-tagged encounter data by latitude and longitude coordinates to identify encounters that occurred on the reservation. However, officials said the agency did not track latitude and longitude coordinates for encounters prior to fiscal year 2010 and, as a result, could not readily provide the number of encounters on the Tohono O’odham Nation reservation prior to that time.

<sup>4</sup>Pub. L. No. 117-113, § 3, 136 Stat. 1173, 1173-74 (2022). As of November 2023, there are 574 federally recognized Tribal Nations (variously called Tribes, nations, bands, pueblos, communities, and Native villages) in the United States. 88 Fed. Reg. 2112 (Jan. 12, 2023). Over 200 of these ethnically, culturally, and linguistically diverse nations are located in Alaska; the other federally recognized Tribes are located in 35 other states.

<sup>5</sup>Pub. L. No. 117-113, § 4, 136 Stat. at 1174.

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the Shadow Wolves program and conduct workforce planning to understand the skills and positions necessary to meet mission needs; (2) ICE's strategies for recruiting and retaining Shadow Wolves, and challenges ICE has faced; and (3) ICE's planning efforts to expand the Shadow Wolves program to comparable units in other tribal lands.

To address all three objectives, we evaluated ICE's Shadow Wolves Enhancement Act strategy and reviewed DHS's hiring authority for the Shadow Wolves program. We also conducted a site visit to the HSI Sells, Arizona, field office within the Tohono O'odham Nation reservation—the only location that currently houses a Shadow Wolves unit—and conducted interviews with ICE and HSI headquarters officials, HSI field officials, Shadow Wolves supervisors and officers, and Tohono O'odham Nation officials.

To address our first objective, we reviewed ICE documentation of the program's mission and Shadow Wolves member responsibilities from fiscal years 2006 through 2023.<sup>6</sup> Documents included strategic planning documents from calendar years 2006 through 2009 that updated the program's mission after operational changes, position descriptions for the General Schedule (GS)-1801 tactical officer and GS-1811 special agent job series, and planning documents ICE developed after enactment of the Shadow Wolves Enhancement Act related to staffing needs. We interviewed HSI headquarters and field office officials; Shadow Wolves supervisors and officers; and Tohono O'odham Nation officials regarding the mission, benefits, and role of the Shadow Wolves program. We also assessed ICE's workforce planning efforts against DHS's Workforce Planning Guide and leading practices for strategic planning identified in our prior work.<sup>7</sup>

To address our second objective, we surveyed all eight members of the Shadow Wolves program regarding important factors for retention and reclassification from their current tactical officer positions to special agent

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<sup>6</sup>We selected these years to include sufficient context and current information, beginning with the transfer of the Shadow Wolves program to ICE in 2006.

<sup>7</sup>DHS, *DHS Workforce Planning Guide* (October 2022); GAO, *Elections: DOD Needs More Comprehensive Planning to Address Military and Overseas Absentee Voting Challenges*, [GAO-16-378](#) (Washington, D.C.: Apr. 20, 2016); and GAO, *Human Capital: Key Principles for Effective Strategic Workforce Planning*, [GAO-04-39](#) (Washington, D.C.: Dec. 11, 2003).



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(see appendix I for further details on our survey).<sup>8</sup> Further, we analyzed the potential effects of reclassification from the tactical officer position to special agent on pay and retirement compensation (see appendix II for further details on our pay analysis). We reviewed strategic planning documents related to recruitment and retention that ICE developed after enactment of the act and ICE analysis of Shadow Wolves retirement timelines. We also reviewed ICE human capital policy documents to learn about career considerations for law enforcement personnel, including ICE's Criminal Investigator Hiring and Career Progression Directive<sup>9</sup> and ICE's Premium Pay Guide.<sup>10</sup> We assessed ICE's strategies for recruitment and retention against DHS's Workforce Planning Guide, ICE's Criminal Investigator Hiring and Career Progression directive, and ICE's October 2022 Shadow Wolves Enhancement Act strategy. We interviewed Shadow Wolves supervisors and officers, HSI headquarters and field office officials, and Tohono O'odham Nation officials regarding retention, reclassification, and recruitment. We also interviewed ICE Office of Human Capital officials and Office of Personnel Management (OPM) officials about options available to ICE for recruiting and retaining Shadow Wolves and for addressing career limitations.

To address our third objective, we analyzed ICE documentation on Shadow Wolves expansion planning. This included memos from the agency's previous evaluation of possible Shadow Wolves expansion from 2007 to 2009. That evaluation detailed the agency's process and analysis for evaluating locations, as well as the rationale behind ICE's decision not to expand beyond the Tohono O'odham Nation reservation at that time. We also reviewed documentation on ICE's expansion planning efforts after the Shadow Wolves Enhancement Act became law in April 2022 to assess the extent to which ICE had a process and criteria for evaluating and selecting expansion locations. This included reviewing interim planning documents, meeting minutes from the working group tasked with implementing the act, and ICE correspondence with tribal officials. We assessed ICE's expansion planning efforts against the goals ICE set for evaluating expansion in its Shadow Wolves Enhancement Act strategy. We interviewed HSI headquarters officials to learn about past and present expansion planning. We interviewed Shadow Wolves members and

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<sup>8</sup>The program has ranged in size from seven to 22 members. See figure 3 for the number of Shadow Wolves members during calendar years 2003 to 2023.

<sup>9</sup>ICE, *Criminal Investigator Hiring and Career Progression*, Directive 1002.2 (December 7, 2010).

<sup>10</sup>ICE, *Premium Pay Guide: Version 2.0*, Policy 1040.2 (May 7, 2015).

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Tohono O’odham Nation officials to obtain their perspectives on program expansion. Additionally, we interviewed U.S. Border Patrol officials regarding their perspectives on the Shadow Wolves program’s role and potential expansion efforts.

We conducted this performance audit from November 2022 to January 2024 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.

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## Background

Within DHS, ICE’s mission is to promote homeland security and public safety through the enforcement of federal laws governing border control, customs, trade, and immigration. ICE’s HSI is the principal investigative arm of DHS. HSI is responsible for investigating a range of domestic and international activities arising from the illegal movement of people and goods, including the smuggling of humans, narcotics, and weapons. The Shadow Wolves operate under the direction of the Special Agent in Charge of HSI’s Phoenix office, while the Assistant Special Agent in Charge of the HSI Sells office oversees the unit’s day-to-day duties. HSI’s Narcotics and Contraband Smuggling Unit oversees planning for the Shadow Wolves program at the headquarters level.

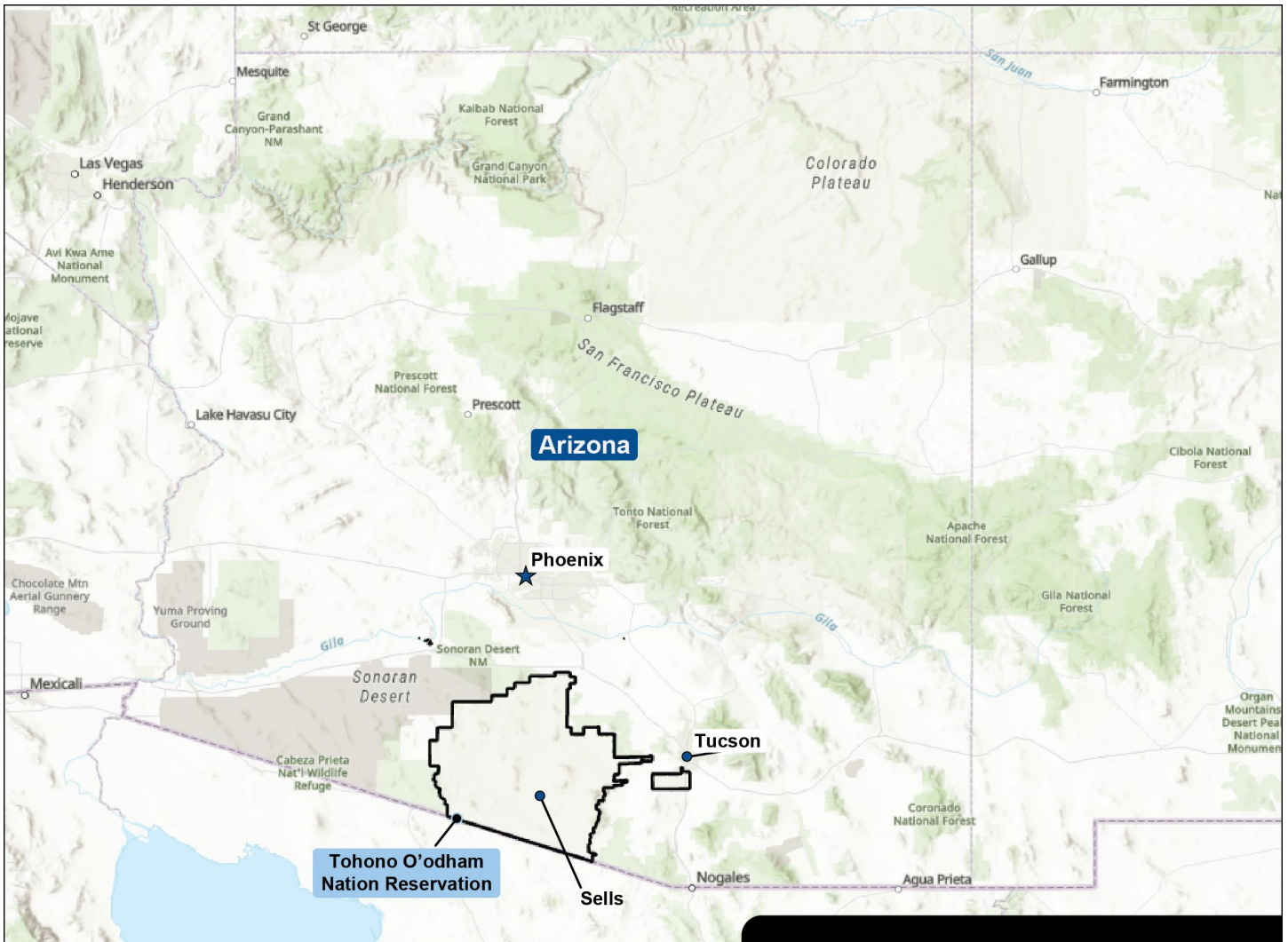
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## Activities of the Shadow Wolves Program

The Shadow Wolves have historically specialized in the interdiction of drug and human smugglers through the rugged terrain of Arizona’s Sonoran Desert. The unit has used both technology and traditional Indigenous tracking methods to interdict millions of pounds of illegal controlled substances smuggled into the Tohono O’odham Nation reservation and into the interior of the United States from Mexico, according to ICE. According to Tohono O’odham Nation officials, Shadow Wolves have also used their skills to recover missing people, including children. In addition, Shadow Wolves members have traveled overseas to train law enforcement personnel and border officers in other countries in traditional tracking.

Located in southern Arizona, the Tohono O’odham Nation reservation is about the size of Connecticut and shares approximately 62 miles of international border with Mexico. Figure 1 shows the location of the Tohono O’odham Nation reservation, and Sells, Arizona, the capital of the Tohono O’odham Nation where the Shadow Wolves are based.

**Figure 1: Location of Tohono O’odham Nation Reservation**



Source: Census Bureau and ESRI. | GAO-24-106385

According to ICE, the Shadow Wolves unit seized hundreds of thousands of pounds of marijuana, along with other drugs, illegal weapons, and cash used to promote illegal activity. For example, in calendar year 2003, the unit seized over 120,000 pounds of marijuana. More recently, the Shadow Wolves led and participated in interdiction and investigative efforts that resulted in 437 drug and immigration arrests, as well as the seizure of over 117,264 pounds of drugs, 45 weapons, 251 vehicles, and over \$847,000 in U.S. currency between 2010 and 2020, according to ICE.

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Traditional Indigenous tracking skills originate from the history and culture of various Tribes, based on knowledge passed down from generation to generation, according to Shadow Wolves members. For some Tribes, these skills derived from traditional hunting practices, while for others they derived from the Tribe's nomadic nature. For example, some Tribes have traditionally hunted for food, which requires animal tracking. Other Tribes were traditionally farmers and gatherers and used unique animal tracking skills to locate and move livestock during changing seasons. In addition to traditional Indigenous tracking, some Shadow Wolves stated that they received training in tracking methods as part of their military service prior to becoming Shadow Wolves.

The Shadow Wolves track people and animals by "cutting for sign" in the desert. Cutting for sign involves identifying physical evidence left behind by smugglers, such as footprints, tire tracks, or clothing. For example, Shadow Wolves said they can analyze shoe prints to determine how old the tracks are, whether an individual was carrying a heavy load on their back, and if the individual was running or walking. They also said they can analyze animal tracks to determine whether an animal was walking aimlessly, feeding, or being led for use in smuggling, and whether the animal was carrying a heavy load. Shadow Wolves might spend hours or days tracking in the field following a sign before making arrests or seizures.

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## History of the Shadow Wolves Program

**Transfer from the Customs Service to ICE.** The Shadow Wolves program was first established under the U.S. Customs Service's Office of Investigations.<sup>11</sup> In March 2003, following the creation of DHS and the elimination of the Customs Service, the program moved briefly to ICE until the decision was made in May 2003 to transfer the program to U.S. Customs and Border Protection's (CBP) U.S. Border Patrol, with the Border Patrol's Tucson sector overseeing the unit.<sup>12</sup> The Shadow Wolves were transferred to Border Patrol with both the Shadow Wolves and Border Patrol focused on interdiction. In June 2003, the Tohono O'odham

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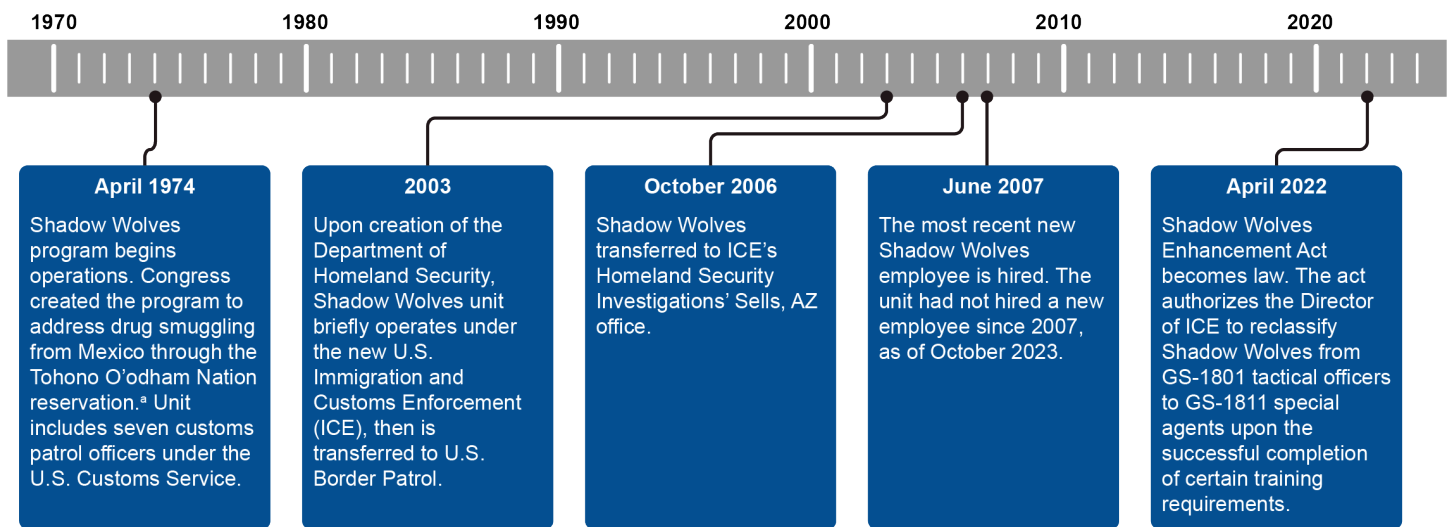
<sup>11</sup>According to ICE documentation, an act of Congress created the Shadow Wolves program in 1972, and on April 14, 1974, the U.S. Customs Service swore in the first seven Shadow Wolves. See also Pub. L. No. 117-113, 136 Stat. 1173.

<sup>12</sup>See Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (creating DHS and moving various agencies and components to the newly created department). Congress established ICE in March 2003 by combining the criminal investigators from the U.S. Customs Service and the criminal investigators from the Immigration and Naturalization Service, which had been a component of the Department of Justice. The remaining elements of the Customs Service and the Immigration and Naturalization Service were reorganized into, among other agencies, CBP.

Nation Legislative Council issued a resolution stating its opposition to transferring the Shadow Wolves to CBP. The Council stated that the transfer would have a detrimental effect because the Shadow Wolves would be managed by Border Patrol officials unfamiliar with their expertise and operational methods.

The program transferred from CBP back to ICE in October 2006.<sup>13</sup> The Shadow Wolves Enhancement Act, which became law in April 2022, authorized ICE to reclassify Shadow Wolves to special agent, which we discuss below. See figure 2 for an overview of the Shadow Wolves program's history.

**Figure 2: History of the Shadow Wolves Program**



Source: GAO analysis of ICE documents. | GAO-24-106385

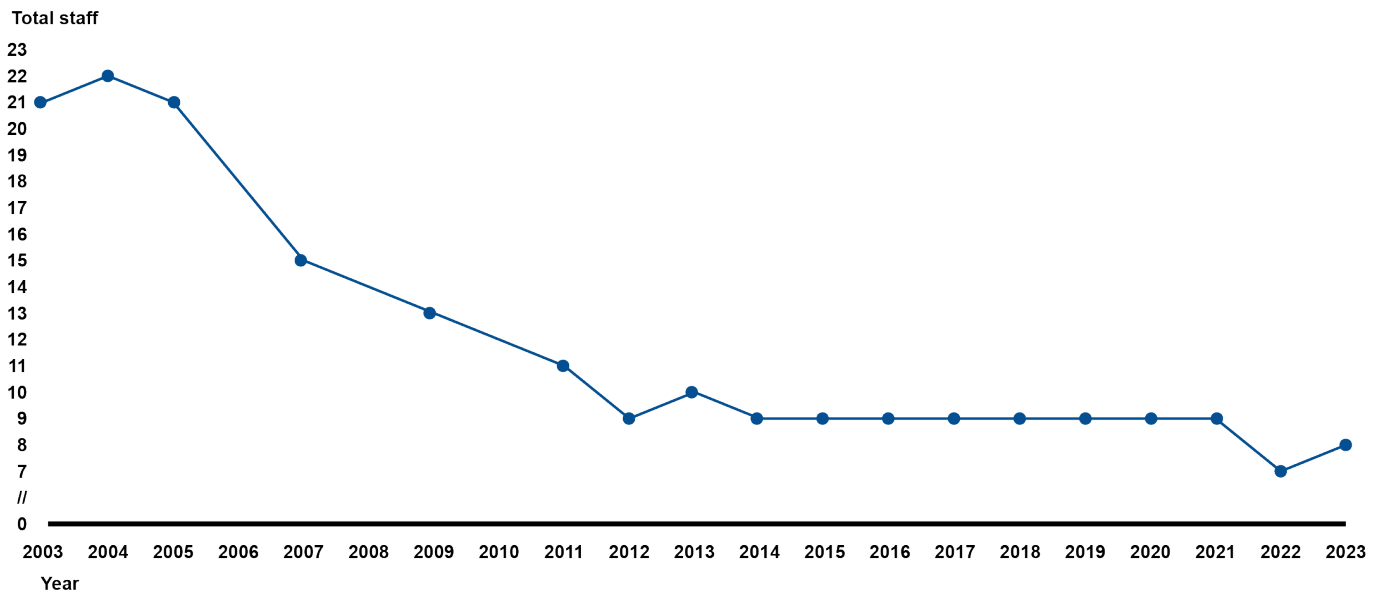
<sup>a</sup>According to ICE, an act of Congress created the Shadow Wolves program in 1972, and on April 14, 1974, the U.S. Customs Service swore in the first seven Shadow Wolves.

**Shadow Wolves staffing levels.** The Shadow Wolves program originally consisted of seven members, all of whom were Tohono O'odham. The program has ranged in size from seven to 22 members (see fig. 3). The unit's eight current members have varying American Indian ancestry

<sup>13</sup>See H.R. Rep. No. 109-699, at 125, 132 (2006) (accompanying the Department of Homeland Security Appropriations Act, 2007, Pub. L. No. 109-295, 120 Stat. 1355 (2006)).

according to ICE documents, including Tohono O’odham, Blackfoot, Navajo, and Sioux.

**Figure 3: Number of Shadow Wolves, Calendar Years 2003 to 2023**



Source: GAO analysis of U.S. Immigration and Customs Enforcement (ICE) documents. | GAO-24-106385

Note: The Shadow Wolves program began with seven members in 1974. ICE does not have information on the number of Shadow Wolves employees from calendar years 1975 through 2002. Dots indicate years with available staffing data.

### Hiring Authority for the Shadow Wolves Program

Civil service personnel laws found under Title 5 of the U.S. Code include the rules agencies must follow to hire employees. Agencies may hire through the competitive service process, which generally requires applicants to pass a competitive examination and requires agencies to identify the most qualified applicants.<sup>14</sup> Alternatively, the President has delegated authority to OPM to make excepted service appointments when it is neither feasible nor practical to use competitive service qualification standards or to rate applicants using traditional competitive

<sup>14</sup>Specifically, agencies are required to (1) notify the public that the government will accept job applications for a position, (2) screen applications against minimum qualification standards, (3) apply selection priorities such as veterans’ preference, and (4) assess applicants’ relative competencies—knowledge, skills, and abilities—against job-related criteria. See 5 U.S.C. §§ 3304, 3309, 2108; see 5 C.F.R. §§ 338.301, 300.102, 300.103(a), 330.103.

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examining procedures.<sup>15</sup> The excepted service includes five categories of appointing authorities, which are contained in Schedules A, B, C, D, and E.<sup>16</sup>

OPM has provided DHS with appointment authority for the Shadow Wolves program under Schedule A of the excepted service.<sup>17</sup> At the time that ICE submitted its Shadow Wolves Enhancement Act strategy to Congress and GAO in October 2022, the program’s Schedule A authority allowed for hiring up to 25 positions of ICE tactical officers in the Tohono O’odham Nation for persons with one-quarter or more American Indian ancestry.<sup>18</sup> ICE requested changes to the program’s hiring authority in March 2023.<sup>19</sup>

In August 2023, OPM provided ICE with a new and more expansive hiring authority, but at the same time, ICE retained its existing Schedule A authority.<sup>20</sup> Therefore, for the purposes of this report, we refer to the

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<sup>15</sup> 5 C.F.R. § 6.1; see also 5 U.S.C. §§ 1104, 3301, 3302. Federal employees in the civil service are employed in either the competitive service, the excepted service, or the Senior Executive Service. The competitive service includes all civil service positions in the executive branch, except for Senior Executive Service positions, Senate-confirmed appointees (unless otherwise provided), and positions which are specifically excepted from the competitive service by or under statute. 5 U.S.C. § 2102. The excepted service consists of those civil service positions which are not in the competitive service or the Senior Executive Service. 5 U.S.C. § 2103.

<sup>16</sup> See 5 C.F.R. § 6.2.

<sup>17</sup> Schedule A allows agencies to make appointments which are not of a confidential or policy-determining character, which are not in the Senior Executive Service, and for which the application of the qualification standards and requirements of the competitive service would not be practicable. 5 C.F.R. § 213.3101. OPM defines “appointment” as “any personnel action that brings an individual onto the rolls (staff) of an agency.” OPM, *The Guide to Processing Personnel Actions*, Ch. 35: Glossary of Terms Used in Processing Personnel Actions (March 2017), available at <https://www.opm.gov/policy-data-oversight/data-analysis-documentation/personnel-documentation/#url=Personnel-Actions>. In this report, we use the terms “appointment” or “hire” to refer to such personnel actions, including the hiring of individuals into permanent career positions at federal agencies.

<sup>18</sup> 87 Fed. Reg. 52042, 52046 (Aug. 24, 2022) (Sch. A, 213.3111(e)).

<sup>19</sup> Specifically, ICE requested the authority to hire up to 125 Shadow Wolves as GS-1811 special agents, from the GS-05 through GS-13 grade levels, in areas near the U.S.-Mexico and U.S.-Canada borders.

<sup>20</sup> Specifically, OPM authorized ICE to hire up to 125 Shadow Wolves as special agents in areas near the U.S.-Canada or U.S.-Mexico borders, with the approval and consent of the appropriate Tribe. The authority allows ICE to hire Shadow Wolves at the GS-05 through GS-14 grade levels. The new authority maintains the requirement for Shadow Wolves to be of one-quarter or more American Indian ancestry. See Sch. A, 213.3111(g)(2).

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hiring authority ICE possessed when it developed its October 2022 strategy as the pre-August 2023 hiring authority, and the new hiring authority that ICE was granted in August 2023 as the August 2023 hiring authority.<sup>21</sup>

Excepted service employees are generally more limited in their opportunities to move to a new position within their agency or the federal government compared to competitive service employees. For example, they are not eligible for merit promotions or lateral transfers, but rather must compete against applicants from the public when applying for a competitive service position.

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## Key Concepts in Federal Hiring and Human Capital Management

**Reclassification.** Position classification is a process through which federal positions are assigned to a pay system, series, title, and grade or band, based on consistent application of position classification standards.<sup>22</sup> The General Schedule (GS) classification system is a mechanism for organizing work, notably for the purposes of determining pay, based on a position's duties, responsibilities, and qualification requirements. Current Shadow Wolves are classified as GS-1801 tactical officers under HSI as of October 2023.

Reclassification occurs when an agency changes the title, series, grade, or pay system of a position based on the application of published position classification standards or guides.<sup>23</sup> The Shadow Wolves Enhancement

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<sup>21</sup>Pursuant to 5 C.F.R. §§ 6.2, 213.103, OPM must publish annually a consolidated listing of available Schedule A, B, and C hiring authorities. OPM has historically included the hiring authority for Shadow Wolves in its annual notices containing the consolidated listing; however, no substantive changes have been made to the Shadow Wolves hiring authority since 2012. Specifically, in 2012, OPM added the term "Shadow Wolves" to refer to ICE tactical officers.

<sup>22</sup>A job series consists of a group of positions in a similarly specialized line of work and with similar qualification requirements. Series are designated by a title and number. For example, the Criminal Investigation Series has a series number of GS-1811, and the General Inspection, Investigation, Enforcement, and Compliance Series has a series number of GS-1801. Position titles are the official names of the positions within a job series, such as GS-1801 Tactical Officers or GS-1811 Special Agents. OPM provides titles as part of its role in classification, but agencies can develop unofficial titles specific to their mission for use within the agency. Grades are numerical designations based on the complexity of the work and knowledge required to do the job and are on a scale of GS-01 to GS-15. For example, GS-1811-12 indicates an employee in the Criminal Investigation job series at grade 12. Each grade has 10 steps which represent periodic increases in an employee's rate of basic pay if the employee obtains a satisfactory performance evaluation.

<sup>23</sup>See 5 C.F.R. § 511.701.



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Act authorized, but did not require, ICE to reclassify Shadow Wolves from GS-1801 tactical officers to GS-1811 special agents upon the completion of certain training requirements.<sup>24</sup> The report accompanying the act from the House Committee on Homeland Security provided that the act seeks to address Shadow Wolves' unique limitations to career advancement, job mobility, and pay equity due to their classification.<sup>25</sup> Outside of the Shadow Wolves program, HSI phased out its other tactical officer positions in favor of GS-1811 special agents. We provide information on career limitations facing Shadow Wolves tactical officers, as well as the impacts of reclassifying to special agent, later in this report.

**Conversion to the competitive service.** Conversion generally refers to a change from one appointment to another in the same agency with no more than 3 days' break in service.<sup>26</sup> A conversion can occur when the appointment authority has changed—such as when an employee moves from the excepted service to the competitive service. Some excepted service appointments may later be converted to the competitive service. For example, agencies may hire employees in the excepted service under the Recent Graduates Program and convert them to the competitive service after successful completion of at least 1 year of continuous service, in addition to meeting performance requirements and qualification standards.<sup>27</sup>

**Workforce Planning.** Strategic workforce planning addresses two critical needs: (1) aligning an organization's human capital program with its current and emerging mission and programmatic goals; and (2) developing long-term strategies for acquiring, developing, and retaining staff to achieve programmatic goals. While agencies' approaches to

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<sup>24</sup>Specifically, the Shadow Wolves Enhancement Act states that to reclassify to special agent Shadow Wolves must have completed the Federal Law Enforcement Training Centers' (FLETC) Criminal Investigator Training Program. In addition, Shadow Wolves hired before March 2003 must have completed the Customs Basic Enforcement School, while those hired during or after March 2003 must have completed the ICE HSI Special Agent Training. See Pub. L. No. 117-113, § 2, 136 Stat. at 1173.

<sup>25</sup>H.R. Rep. No. 117-246, at 2 (2022).

<sup>26</sup>See OPM, Guide to Processing Personnel Actions, Glossary of Terms Used in Processing Personnel Actions, at 35-3.

<sup>27</sup>The Recent Graduates Program, administered by OPM, is a development program intended to promote possible careers in the civil service. The program is available to individuals who, within the previous 2 years (unless provided otherwise), graduated from qualifying educational institutions with an associates, bachelors, masters, professional, doctorate, vocational or technical degree or certificate. See 5 C.F.R. § 362.302.

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workforce planning will vary, we have identified five key principles that strategic workforce planning should address irrespective of the specific context or process (see fig. 4).<sup>28</sup>

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**Figure 4: Key Principles for Effective Strategic Workforce Planning**



**Principle 1**

**Involve top management, employees, and other stakeholders** in developing, communicating, and implementing the strategic workforce plan



**Principle 2**

**Identify the critical skills and competencies** that will be needed to achieve current and future programmatic results



**Principle 3**

**Develop strategies** that are tailored to address gaps in number, deployment, and alignment of human capital approaches for enabling and sustaining the contributions of all critical skills and competencies



**Principle 4**

**Build the capability** needed to address administrative, educational, and other requirements important to support workforce strategies



**Principle 5**

**Monitor and evaluate** the agency's progress toward its human capital goals and the contribution that human capital results have made toward achieving programmatic goals

Source: GAO; GAO illustrations. | GAO-24-106385

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<sup>28</sup>[GAO-04-39](#).

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## ICE Has Not Conducted Key Workforce Planning Tasks for the Shadow Wolves Program to Define Current Mission and Staffing Needs

In 2015, the Shadow Wolves program shifted its operations from interdiction to investigation. However, ICE did not define the program's mission after changing its operations. Additionally, ICE did not perform workforce planning to determine the program's staffing needs following the change of operations. In August 2023, OPM authorized a new Schedule A hiring authority allowing ICE to hire up to 125 Shadow Wolves as special agents.

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## ICE Has Not Defined the Shadow Wolves Program's Mission and Goals since Changes in 2015

### Shadow Wolves Program Operations Shifted from Interdiction to Investigation in 2015

As discussed above, when the Shadow Wolves program began operations in 1974, the members primarily used traditional Indigenous tracking methods to interdict smugglers and seize illegal goods, such as narcotics. Each Shadow Wolves member typically worked alone, on foot or on all-terrain vehicles, and patrolled the Tohono O'odham Nation reservation on scheduled shifts.

In 2015, the Assistant Special Agent in Charge overseeing the HSI Sells field office reassigned the Shadow Wolves to assist other investigative staff within the office. According to HSI officials, the agency transitioned the Shadow Wolves from interdiction into an investigative role to align their duties with HSI's mission to disrupt transnational organized crime. As a result, its members ceased operating as a unit, and their individual duties shifted to assisting HSI special agents, according to Shadow Wolves members. For example, Shadow Wolves assisted special agents in gathering evidence, serving warrants, and making arrests. Shadow Wolves no longer patrolled the reservation, focused on interdiction activities, or conducted traditional tracking. Instead, Shadow Wolves members said they generally performed investigative work outside of the reservation, including in Phoenix and Tucson, Arizona. While Shadow Wolves previously wore uniforms to operate in the desert as part of their traditional tracking and interdiction mission, they shifted to wearing street

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clothes in their investigation role to blend in with the population, according to the HSI field official overseeing the unit (see fig. 5).

**Figure 5: Legacy Shadow Wolves Uniform and Patch**



Shadow Wolves uniform from past interdiction role. Shadow Wolves members said they typically spent large periods of the time in the desert tracking smugglers until 2015. In April 2023, the Homeland Security Investigations (HSI) official overseeing the unit said that Shadow Wolves focus on investigation and typically wear street clothes to blend in with the population.

Source: HSI (Photo). | GAO-24-106385

In 2022, a new Assistant Special Agent in Charge of HSI Sells further adjusted members' duties, although investigations remained the primary focus, according to an HSI field official and Shadow Wolves members. Specifically, the Shadow Wolves resumed working together in a distinct unit and refocused operations on public safety issues on the Tohono O'odham Nation reservation and nearby tribal lands. For example,

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Shadow Wolves duties include investigating trafficking in the tribal community, the distribution of illicit narcotics on tribal land, and overdoses, as well as kidnapping and human smuggling cases. In this role, Shadow Wolves assist tribal, state, and federal partners in joint anti-trafficking efforts. At the time of our review, Shadow Wolves independently perform the same investigative duties as special agents, rather than assisting special agents, according to Shadow Wolves supervisors.

#### ICE Did Not Define Shadow Wolves Mission or Goals after Shift to Investigation

ICE has not defined the mission or goals of the Shadow Wolves program since its operations changed to focus on investigations in 2015. ICE previously defined the program's mission in a memo after a change in operations. Specifically, in November 2006, shortly after the program's transfer to ICE from Border Patrol, ICE issued a memo stating that the program's primary mission would continue to be addressing cross-border smuggling efforts through the reservation. However, the memo stated the mission would expand to include other targets such as possible terrorists and migrants illegally entering the U.S. The memo also distinguished between the role of Shadow Wolves as patrol officers and ICE special agents. For example, it stated that Shadow Wolves were to refer all arrests and seizures to special agents for investigation.

ICE's October 2022 Shadow Wolves Enhancement Act strategy identified significant changes in the program's operating environment that resulted in the changes to the program. These included an increase in federal law enforcement presence along the southwest border; changes in smuggling tactics, techniques, and procedures; and advances in technology, the latter of which the strategy noted has contributed to the diminished utility of the program's traditional interdiction focus. However, the strategy did not define the program's current mission and goals since the shift from interdiction to investigation in 2015.

Agency officials and Shadow Wolves members have expressed varying perspectives on the mission of the Shadow Wolves program. ICE and Tohono O'odham Nation officials generally agreed that there is a need for additional resources to address smuggling on the Tohono O'odham Nation reservation. They also both stated that the Shadow Wolves program, particularly the program's relationship with the tribal community, has contributed to addressing that need. However, ICE officials, Tohono O'odham Nation officials, and Shadow Wolves members have disagreed on the value of interdiction activities in line with the program's pre-2015 mission, as described below:

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- **Building partnerships with tribal communities.** HSI field officials, Shadow Wolves members, and Tohono O’odham Nation officials said that the positive relationship HSI and the Shadow Wolves have with the Tohono O’odham Nation or other tribal communities is a benefit of the program. For example, according to Tohono O’odham Nation officials, the Shadow Wolves have personal and cultural ties that allow them to establish rapport and earn the trust of individuals who otherwise may not cooperate with federal law enforcement. Officials attributed these advantages to the Shadow Wolves’ American Indian heritage, their knowledge of Tohono O’odham culture, and their relationships with community members. According to HSI officials, the Shadow Wolves program enables HSI to better engage with the tribal population and improves the agency’s access to information to combat smuggling and support investigations. One HSI field official noted that the program has always served a tribal liaison role and stated the agency could further emphasize this role.
  - **Supporting tribal law enforcement.** Shadow Wolves members and HSI field officials said that tribal law enforcement often lacks resources, and that the Shadow Wolves program brings additional resources to assist tribal law enforcement. Shadow Wolves supervisors said the program is positioned to supplement any investigations involving Tribes and cross-border activity, and members said that Shadow Wolves have helped other Tribes in Arizona with undercover surveillance. In addition, the HSI field official overseeing the unit said that, in their current role, the Shadow Wolves assist the Tohono O’odham Police Department in addressing drug smuggling and public safety concerns. Tohono O’odham Nation officials said that the Shadow Wolves are an important resource for the Tohono O’odham Police Department, which they said lacks the resources to patrol the border area effectively and deter trafficking.
  - **Interdicting narcotics using Shadow Wolves members’ traditional tracking skillset.** HSI field officials and Shadow Wolves members expressed conflicting opinions on the value of resuming the traditional tracking and interdiction role of the unit. As noted above, HSI field officials stated that the Shadow Wolves’ traditional tracking and interdiction role has diminished in utility given changes such as the increased presence of Border Patrol on and around the reservation in recent decades.<sup>29</sup> However, Shadow Wolves members

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<sup>29</sup>For example, U.S. Border Patrol’s Tucson sector encompasses most of the state of Arizona from the New Mexico state line in the east to the Yuma County line in the west, including the Tohono O’odham Nation reservation. Tucson sector had less than 300 agents in 1993. In 2023, the sector had approximately 3,700 agents.

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we interviewed said they do not believe either Border Patrol operations or a Shadow Wolves unit focusing on investigation fulfills the ongoing need for drug interdiction efforts in the region. Specifically, Shadow Wolves members said they are effective due in part to their traditional tracking skills and ability to operate more discreetly than Border Patrol agents. For example, Shadow Wolves can use unmarked cars, operate undercover, and hike into remote areas to operate covertly. Additionally, Shadow Wolves members noted that while Border Patrol agents tend to be assigned to specific areas, Shadow Wolves have the flexibility to track smugglers anywhere in the region. Tohono O’odham Nation officials said the Shadow Wolves’ traditional tracking skills remain valuable because smugglers often avoid electronic tracking by sticking to lowland areas.

- **Performing both interdiction and investigation.** HSI field officials, Shadow Wolves members, and Tohono O’odham Nation officials all identified potential benefits from Shadow Wolves performing both interdiction and investigation functions. Specifically, HSI field officials and Shadow Wolves members said the program is more effective when members possess both interdiction and investigation skillsets. For example, Shadow Wolves members said both skillsets are important because tracking and interdiction can create leads that result in new investigations. Tohono O’odham Nation officials also said that Shadow Wolves’ tracking and investigation skills complement each other, allowing Shadow Wolves operating in remote areas to interview suspects and more quickly advance their investigations. However, both HSI officials and Shadow Wolves supervisors stated that Shadow Wolves currently perform the same work and share the same investigative duties and authorities as other HSI special agents. While HSI officials said both skillsets are valuable, Shadow Wolves members said that they have focused on investigations since 2015.

According to HSI headquarters officials, headquarters has not defined the mission because local leadership in Sells, Arizona, is tasked with determining the workload, mission, structure, and priorities of their office. HSI field officials said that the Shadow Wolves program is unique compared to other HSI programs because it is currently located in only one office, and as such, much of the program responsibility is with HSI Sells office leadership. HSI headquarters officials said they have not defined the current mission and goals of the program and defer to HSI Sells to define operations and set priorities. However, local officials have also not defined the Shadow Wolves mission and goals. Further, since the Shadow Wolves program currently operates exclusively out of the Tohono O’odham Nation reservation, it is important for HSI to include



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input from the Tohono O’odham Nation as it defines the program’s mission and goals.

DHS’s Workforce Planning Guide calls for conducting workforce planning whenever an enterprise, division, or office reorganizes, or if there are substantial changes in the strategic direction, goals, and objectives of an organization.<sup>30</sup> The guidance also states that workforce planning programs should have goals and objectives directly aligned to support the organization’s mission strategy. We have also previously identified that leading practices for strategic planning include mission statements that define why a program exists, what it does, and how it does it; and strategic goals that explain the purpose of the program and the results, including outcomes, it intends to achieve.<sup>31</sup> Defining the mission and goals of the Shadow Wolves program can better position ICE to conduct effective workforce planning. Additionally, defining a clear mission and goals for the Shadow Wolves program, with input from the Tohono O’odham Nation, can better position HSI to ensure that Shadow Wolves operations are achieving desired outcomes, operations align with HSI’s overall mission strategy, and HSI and Shadow Wolves have a common understanding of the program’s mission.

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### ICE Has Not Determined the Shadow Wolves Program’s Staffing Needs on the Tohono O’odham Nation Reservation

ICE has not determined its staffing needs for the Shadow Wolves program on the Tohono O’odham Nation reservation, including the number of positions and skills needed to meet operational demands. For example, while ICE has reported significant changes in the Shadow Wolves operating environment, the authority to hire up to 25 positions on the Tohono O’odham Nation reservation dates back to 1975, and may not reflect current operational needs.

With respect to the number of positions, ICE previously determined that the size of the unit on the Tohono O’odham Nation reservation was insufficient to conduct certain planned or beneficial activities but has not determined the number of positions needed to conduct those activities. For example, ICE determined in 2009 that the Shadow Wolves program did not have enough staff to train members of potential expansion units in new locations because dedicating staff to training would limit the

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<sup>30</sup>DHS, *DHS Workforce Planning Guide* (October 2022).

<sup>31</sup>[GAO-16-378](#). In addition, we have identified five key principles that strategic workforce planning should address, including that the process should identify critical skills needed to achieve current and future programmatic results, and the process should monitor the contribution human capital results have made toward achieving programmatic goals. [GAO-04-39](#).



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effectiveness of the unit on the Tohono O’odham Nation reservation. At that time, the program had 13 members; the program had eight members as of October 2023. Shadow Wolves members also told us that while they are not currently conducting interdiction activities, they believe interdiction skills are important for the program, and those capabilities are limited by current staffing levels.

With respect to the skills needed to meet operational demands, Shadow Wolves members stated that the program’s needs could vary depending on how ICE defines the program’s mission. For example, according to Shadow Wolves members, ICE would need to recruit individuals with different skills depending on whether the program is focused on criminal investigations or interdiction. Members suggested that recruiting for criminal investigations could prioritize candidates with higher education experience and analysis skills, while recruiting for interdiction could prioritize individuals with law enforcement or military experience.

In March 2023, ICE officials said they had not assessed the staffing needs of the Shadow Wolves unit on the Tohono O’odham Nation reservation because they were still assessing how the unit will operate in a new environment with Shadow Wolves potentially classified as special agents.<sup>32</sup> ICE officials noted that, at the time, the program had authority to hire up to 25 Shadow Wolves on the Tohono O’odham Nation reservation, which they said represents a baseline of what might be required to fulfill their mission.<sup>33</sup> However, the authority to hire up to 25 positions was initially established in 1975 when Shadow Wolves served as customs patrol officers under the U.S. Customs Service, rather than under ICE as special agents.<sup>34</sup>

As discussed earlier in this report, the Shadow Wolves program has experienced significant changes in its operating environment, including advances in technology, an increase in federal law enforcement presence along the border, and changing threats. Further, ICE officials said in

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<sup>32</sup>Though current Shadow Wolves may choose whether to reclassify to special agent, ICE officials said they intend to hire new Shadow Wolves as special agents.

<sup>33</sup>At the time that ICE submitted its Shadow Wolves Enhancement Act strategy in October 2022, the program’s hiring authority allowed for hiring up to 25 positions in the Tohono O’odham Nation. In August 2023, ICE obtained new hiring authority for the program, which allowed for hiring up to 125 positions near the U.S.-Canada and U.S.-Mexico borders.

<sup>34</sup>See 40 Fed. Reg. 33963 (Aug. 13, 1975) (adding 18 more positions, bringing the total number of positions to 25).

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February 2023 that Shadow Wolves had been performing the same duties as special agents for several years in anticipation of the passage of the Shadow Wolves Enhancement Act. Given that Shadow Wolves have already been conducting special agent duties for nearly a decade, it is unclear what impact, if any, reclassification would have on the staffing needs of the program. However, ICE has not determined the program's staffing needs, including the number of positions and skills needed, based on its current agency, mission, and operating environment.

DHS's Workforce Planning Guide states that workforce planning programs should identify required workforce staffing and skills. We have also previously identified agencies determining the skills critical to successfully achieving their missions and goals as an essential principle of strategic workforce planning.<sup>35</sup> Once ICE defines the Shadow Wolves program's mission and goals, determining the program's staffing needs—including the number of positions and skills needed—would better position the program to develop recruitment efforts that would help them accomplish the current goals on the Tohono O'odham Nation reservation.

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## New Authority Allows ICE to Hire Up to 125 Shadow Wolves, Expand to New Locations

In March 2023, ICE requested from OPM a modification to its Schedule A hiring authority in response to the Shadow Wolves Enhancement Act, as stated above. Among other items, ICE's request included authority to hire up to 125 Shadow Wolves as special agents. In devising the request, ICE officials said they did not perform a formal workforce assessment to determine how many Shadow Wolves would be needed in new Shadow Wolves locations, but instead developed a general estimate during a working group meeting.<sup>36</sup> Specifically, officials estimated that if the program were to expand to five Tribes, then based on the pre-August 2023 hiring authority allowing ICE to hire up to 25 employees in the Tohono O'odham Nation reservation, the program might require up to 125 employees.

In August 2023, OPM authorized new Schedule A hiring authority for up to 125 special agents.<sup>37</sup> In addition, the new authority permits ICE to hire Shadow Wolves for positions outside of the Tohono O'odham Nation

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<sup>35</sup>[GAO-04-39](#).

<sup>36</sup>The working group included representation from ICE and HSI headquarters, HSI field officials overseeing the Shadow Wolves unit, members of the Shadow Wolves unit, ICE Office of Human Capital officials, and Office of Principal Legal Advisor officials, among others.

<sup>37</sup>Sch. A, 213.3111(g)(2).

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reservation, specifically in areas near the international borders between the U.S. and Canada or the U.S. and Mexico. It also permits ICE to hire Shadow Wolves as special agents.<sup>38</sup> ICE officials stated that the agency plans to conduct workforce planning to determine the staffing needs for each new expansion unit as the agency evaluates possible locations.

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## ICE's Shadow Wolves Recruitment and Retention Strategy Lacks Goals, Timelines, or Milestones, and Shadow Wolves' Excepted Service Authority Creates Challenges

ICE's strategy for recruiting Shadow Wolves does not have goals, timelines, or milestones, as required by DHS workforce planning guidance. In addition, ICE's retention strategy states that ICE will give current Shadow Wolves the option to reclassify to special agent. However, ICE has not provided Shadow Wolves the information they need to make reclassification decisions, such as how reclassification would impact their compensation. Furthermore, though six of the eight current Shadow Wolves are already eligible to retire, the agency has not recruited or hired any new Shadow Wolves since 2007 and has not conducted succession planning for upcoming retirements. Additionally, according to ICE's Shadow Wolves Enhancement Act strategy, Shadow Wolves' status in the excepted service limits their career opportunities. ICE is pursuing the authority to convert Shadow Wolves from the excepted to the competitive service to address these limitations.

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## ICE's Strategy Lacks Goals, Timelines, and Milestones for Recruiting Shadow Wolves

ICE's Shadow Wolves Enhancement Act strategy includes high-level methods for recruiting Shadow Wolves, but it does not include measurable goals, timelines, or milestones. More specifically, ICE's strategy identifies recruitment methods to include partnering with colleges, engaging tribal youth, and recruiting tribal law enforcement officers. HSI field officials have also identified additional recruiting methods, such as recruiting individuals with American Indian ancestry who are leaving the military and attending conferences where Shadow Wolves can showcase the program and recruit.

While identifying these recruitment methods are positive steps, ICE's strategy does not include measurable goals, timelines, or milestones for recruiting Shadow Wolves. For example, the strategy does not identify

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<sup>38</sup>OPM left ICE's pre-August 2023 hiring authority intact, and as a result, ICE can now hire up to 150 Shadow Wolves—up to 25 tactical officers on the Tohono O'odham Nation reservation and up to 125 special agents in areas near the U.S.-Mexico and U.S. Canada borders. However, ICE officials told us that they do not plan to use the pre-August 2023 hiring authority to hire new Shadow Wolves.

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how many of the authorized positions the agency plans to staff with new hires or the timing for when the agency aims to bring new hires on board.

As noted above, the Shadow Wolves program has not recruited or hired any new Shadow Wolves since 2007. ICE officials said in June 2023 that they did not have goals, timelines, or milestones for recruiting Shadow Wolves because the agency wanted to obtain a modified hiring authority to hire new Shadow Wolves as special agents and the ability to convert them to the competitive service before resuming recruitment. However, the Shadow Wolves Enhancement Act required ICE to develop a strategy for recruiting Shadow Wolves, and such details are important components of a recruitment strategy. For example, DHS's Workforce Planning Guide states that agencies should have goals and objectives for workforce planning that directly align to and support the organization's mission strategy to achieve the future state. The guide further states that agencies should have timelines for their workforce planning efforts and milestones in the form of specific time-bound projects, activities, or tasks that planners assign to individuals in the agency.

However, ICE's strategy does not include these details. Further, while OPM ultimately granted ICE new hiring authority in August 2023, ICE's pre-August 2023 hiring authority allowed—and continues to allow—it to hire up to a total of 25 Shadow Wolves in Sells, Arizona. However, the agency has not hired a new Shadow Wolves member since 2007.

By developing and documenting measurable goals, timelines, and milestones, ICE can review progress, assess the effectiveness of its recruitment strategy, and adjust its recruiting strategy if the agency is not meeting defined metrics. Further, as we discuss later in this report, since existing Shadow Wolves are nearing retirement, developing goals, timelines, and milestones for recruitment can better position ICE to take timely action to hire new Shadow Wolves.

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### ICE's Retention Strategy Includes Reclassifying Shadow Wolves to Special Agent, but ICE Has Not Provided Shadow Wolves Key Information About Reclassification

In its Shadow Wolves Enhancement Act strategy, ICE identified allowing Shadow Wolves to reclassify to special agent as the agency's primary tool for retaining current Shadow Wolves. However, as of October 2023, none of the current Shadow Wolves had reclassified, and ICE had not provided them key information on how reclassification would affect compensation or the required steps for reclassification. Additionally, although ICE calculated that all current members are due to retire by 2030, and six of the eight members are eligible to retire as of October 2023, the agency has not conducted succession planning to ensure that there will be experienced Shadow Wolves available to train new recruits.

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Most Shadow Wolves Identified Increased Compensation and Promotion Potential as Important Factors for Retention

ICE's Shadow Wolves Enhancement Act strategy states that reclassifying Shadow Wolves to special agent is the agency's primary tool for retaining current Shadow Wolves. While the Shadow Wolves Enhancement Act gave ICE authority to reclassify Shadow Wolves from tactical officer to special agent, ICE plans to allow each current member of the Shadow Wolves to decide whether to reclassify.<sup>39</sup> In June 2023, ICE officials said they did not have a timeline for the reclassification process, but that any Shadow Wolves member interested in reclassification could begin the process by informing officials.

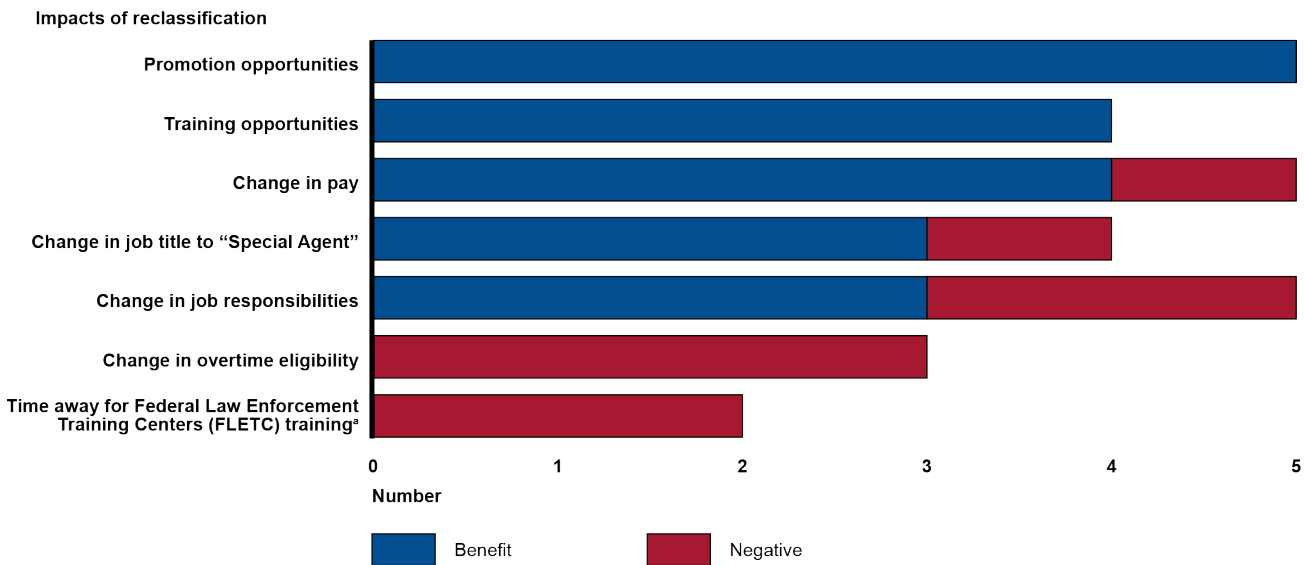
In April 2023, we surveyed all eight current Shadow Wolves on the most important considerations for retention and factors affecting their decision to reclassify to special agent (see fig. 6).<sup>40</sup> Our survey found that Shadow Wolves consider increased promotion potential, compensation, and training opportunities to be the greatest benefits of reclassifying to special agent. Specifically, of the eight current Shadow Wolves, five identified additional promotional opportunities as a benefit, and four identified changes in pay and additional training opportunities as benefits. However, three Shadow Wolves identified changes in overtime eligibility as a negative impact of reclassification.

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<sup>39</sup>See Pub. L. No. 117-113, § 2, 136 Stat. at 1173.

<sup>40</sup>We asked all eight respondents about a variety of impacts they might consider to be potential benefits or negatives to reclassification. We present impacts where at least two respondents identified the impact as a benefit or a negative.

**Figure 6: Shadow Wolves Survey Responses on the Impacts of Reclassification to Special Agent**



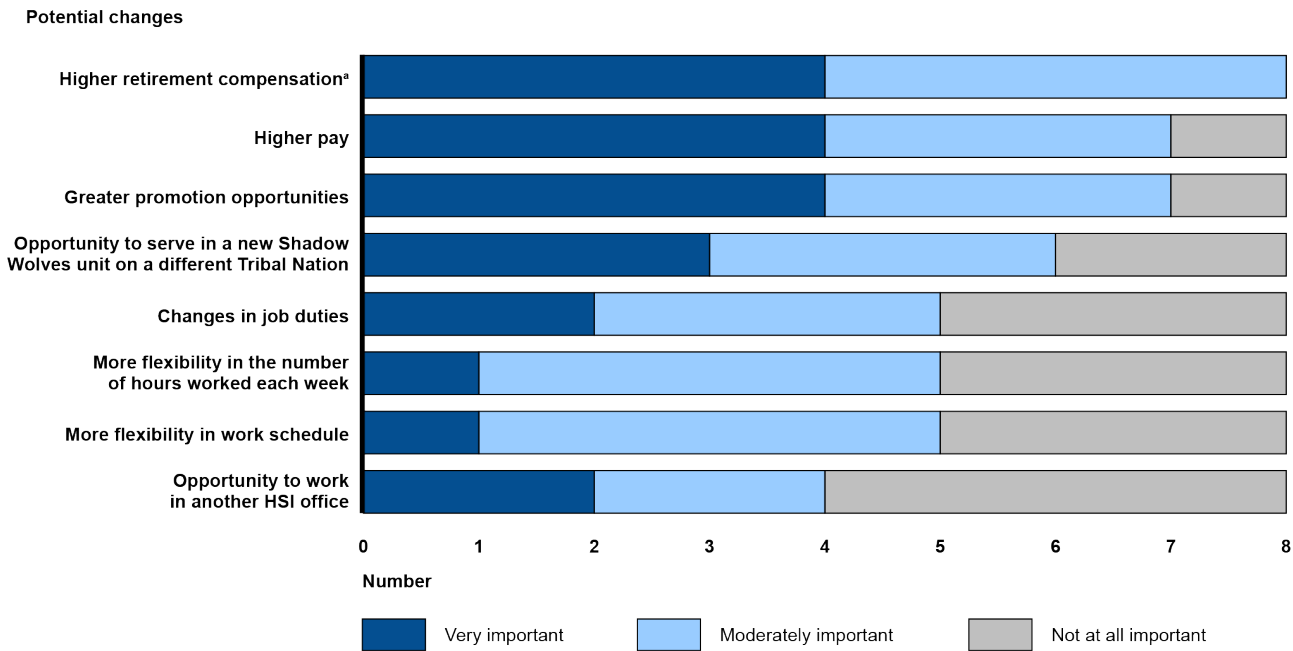
Source: GAO Survey of Shadow Wolves Employees. | GAO-24-106385

Note: We asked all eight respondents about a variety of impacts they might consider to be potential benefits or negatives to reclassification. We present impacts where at least two respondents identified the impact as a benefit or a negative.

<sup>a</sup>Required FLETC training for reclassification to special agent includes the 56-day Criminal Investigator Training Program and the 71-day Homeland Security Investigations Special Agent Training.

We also asked Shadow Wolves about important factors for retention. In their survey responses, all Shadow Wolves identified higher retirement compensation as an important factor when deciding whether to stay with the Shadow Wolves program (see fig. 7). Most Shadow Wolves also identified higher pay and greater promotion potential as important factors. For further detail on Shadow Wolves' considerations for reclassification and retention, see appendix I.

**Figure 7: Shadow Wolves Survey Responses on Important Factors for Retention**



Source: GAO Survey of Shadow Wolves Employees. | GAO-24-106385

Note: We asked all eight members of the Shadow Wolves program about a variety of changes that would make members want to stay with the Shadow Wolves program. The figure includes all response categories offered to respondents.

<sup>a</sup>According to ICE analysis, six Shadow Wolves are currently eligible to retire, and all current Shadow Wolves will be retired by fiscal year 2030.

**ICE Has Not Provided Shadow Wolves with Information Needed to Make Informed Reclassification Decisions**

Reclassification from tactical officer to special agent has implications for Shadow Wolves members’ pay, retirement compensation, and leave availability. It is not possible to draw overall conclusions about the impact of reclassification on Shadow Wolves’ compensation as a group. Rather, the specific effects of reclassification vary based on an individual’s current pay, the number of overtime hours they work, and the number of years they plan to work before retirement. However, as of October 2023, ICE had not provided specific, individualized information on how reclassification would affect each individual’s pay and retirement compensation. ICE officials said that they directed Shadow Wolves to a specific point of contact to obtain further information regarding their individual circumstances during a December 2022 meeting but that none had done so.

For example, reclassification would affect how Shadow Wolves are paid for overtime work. As GS-1801 tactical officers, Shadow Wolves receive

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two forms of overtime pay: (1) Fair Labor Standards Act overtime<sup>41</sup> and (2) Administratively Uncontrollable Overtime.<sup>42</sup> They earn overtime pay for hours worked in excess of an 80 hour, 2-week pay period. All the Shadow Wolves we interviewed stated that their duties regularly require them to work overtime.<sup>43</sup> Based on the number of irregular overtime hours in a pay period, Shadow Wolves typically receive an additional 25 percent of their basic pay rate for the 80 hours in the period. In addition, they typically receive Fair Labor Standards Act overtime paid at an additional 50 percent of the hourly regular rate of pay for each hour worked in excess of 85.5 hours in the pay period.

Upon reclassifying to special agent, Shadow Wolves would earn Law Enforcement Availability Pay (LEAP) and would no longer be eligible for Fair Labor Standards Act overtime or Administratively Uncontrollable Overtime. LEAP pay is equal to 25 percent of a special agent's basic pay rate and compensates for all unscheduled duty that is typically required of special agents.<sup>44</sup> Therefore, after reclassifying to special agent, Shadow Wolves would no longer be compensated for unscheduled overtime on an

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<sup>41</sup>Fair Labor Standards Act overtime is either regular overtime or irregular overtime. Regular overtime is scheduled prior to the administrative work week, while irregular overtime is ordered and approved during the same administrative work week. Fair Labor Standards Act overtime is paid at time and an additional one-half the hourly regular rate of pay for all hours above the applicable threshold. See 5 C.F.R. §§ 550.111, 550.103, 551.501(c), 551.541. Since Fair Labor Standards Act-nonexempt Administratively Uncontrollable Overtime recipients have received straight time pay for basic and Administratively Uncontrollable Overtime hours, there is a remaining Fair Labor Standards Act obligation to pay half of the Fair Labor Standards Act hourly regular rate for Administratively Uncontrollable Overtime hours in excess of 85.5 hours per biweekly (80 hour) pay period. See 29 U.S.C. § 207(k); 5 C.F.R. § 551.512.

<sup>42</sup>Administratively Uncontrollable Overtime is paid to an employee in a position in which the hours of duty cannot be controlled administratively and requires substantial amounts of irregular or occasional overtime work. The employee is generally responsible for recognizing, without supervision, circumstances which require the employee to remain on duty. If an employee qualifies for Administratively Uncontrollable Overtime pay, all irregular overtime hours are compensated by Administratively Uncontrollable Overtime pay. Hours that fall under Administratively Uncontrollable Overtime are paid at different rates depending on the number of irregular overtime hours worked, from 10 to 25 percent of an employee's basic pay rate. Administratively Uncontrollable Overtime is paid with the appropriate premium pay rate times the 80 base hours in the pay period. See 5 C.F.R. §§ 550.151, 550.154.

<sup>43</sup>We interviewed seven of the eight current Shadow Wolves during a site visit in April 2023.

<sup>44</sup>Employees must average 2 hours of unscheduled duty per regular work day over a 1-year period to be eligible for LEAP. See 5 C.F.R. §§ 550.181, 550.183(a), 550.185, 550.186(a), (c).



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hourly basis, which could result in lower pay. For example, as tactical officers Shadow Wolves are compensated hourly for unscheduled overtime above 85.5 hours per pay period and therefore earn more by working additional unscheduled overtime hours. However, by earning availability pay as special agents, Shadow Wolves would earn the same amount in a pay period by working additional unscheduled overtime as they would earn by working no overtime.

Additionally, the two overtime systems differ in how they account for leave. Specifically, when tactical officers take leave, their Administratively Uncontrollable Overtime pay rate could decline if they do not work additional hours to compensate for the leave hours.<sup>45</sup> In contrast, special agents can take annual leave without any effects on LEAP pay because LEAP pay is not affected by leave.<sup>46</sup> Therefore, Shadow Wolves cited a potential tradeoff between higher potential earnings as tactical officers and improved work-life balance as special agents. For example, Shadow Wolves stated they do not take leave often in order to maintain a higher Administratively Uncontrollable Overtime rate, which reduces morale.

ICE Office of Human Capital officials told us that in December 2022, they met with Shadow Wolves members and shared a general overview of how reclassification to special agent could affect pay and retirement compensation. The officials said that during the meeting, they provided a general comparison of the GS-1801 tactical officer and GS-1811 special agent job series, including comparing the overtime pay systems. For example, Office of Human Capital officials explained that the primary benefit of reclassification is higher retirement compensation. In addition, the officials told the Shadow Wolves that reclassification could result in

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<sup>45</sup>Administratively Uncontrollable Overtime is paid at a rate between 10 to 25 percent of an employee's basic pay rate. The Administratively Uncontrollable Overtime rate is based on average irregular overtime hours per week. Days of leave do not reduce the number of weeks in the denominator of the average hours fraction, but those same days of leave reduce the opportunity to work irregular overtime hours. 5 C.F.R. § 550.151. For example, a tactical officer who works 4 hours of irregular overtime per week earns a 10 percent overtime pay rate. A tactical officer who works over 9 hours per week of irregular overtime earns a 25 percent overtime pay rate.

<sup>46</sup>LEAP recipients are required to maintain an annual average of 2 hours of unscheduled duty per regular workday, which is defined as a day in which the employee works at least 4 hours of the 8-hour basic workday. See 5 U.S.C. § 5545a(a)(4); 5 C.F.R. § 550.183(b). Thus, if a LEAP recipient has more than 4 hours of leave on a given day, that day is not considered a regular workday, thereby lowering the denominator in the calculation needed to maintain a 2 hour average.

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significantly lower pay for some employees because of the different overtime pay system, but they did not provide specifics.

We analyzed how reclassification would impact an example Shadow Wolves employee's pay and retirement compensation. We based our analysis on a fictional Shadow Wolves employee based on factors common to members of the unit. We found that the exact impact of reclassification differs for each employee, depending on unique inputs such as the number of work hours and base pay. According to our analysis, Shadow Wolves would receive a higher base pay by reclassifying, but their total annual pay would decrease because of the overtime pay system for special agents (see fig. 8). However, Shadow Wolves would receive more retirement compensation by reclassifying, because a higher percentage of their pay would be eligible for their "high-3" average salary in the special agent job series.<sup>47</sup> Specifically, the fictional Shadow Wolves employee's pay of about \$152,500 would decrease about \$7,000 (4.6 percent) by reclassifying to special agent.<sup>48</sup>

However, in that example, the employee's annual retirement compensation would increase. For example, the employee's annual retirement-creditable compensation would increase by about \$1,000 (2.2 percent) by serving for 1 year as a special agent, about \$2,100 (4.5 percent) by serving for 2 years, and about \$3,600 (7.7 percent) by serving 3 years as a special agent, as shown in figure 8. By reclassifying to special agent and serving for 3 years in that position, the employee would receive about \$46,600 in additional retirement compensation by age 70

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<sup>47</sup>Specifically, after reclassifying to special agent, the fictional employee would have a higher rate of basic pay at GS-13 and a higher retirement-creditable premium pay, resulting in a higher high-3 average salary used in their annuity computation. Fair Labor Standards Act overtime is not included for calculating an employee's high-3 for retirement compensation. According to our analysis, Fair Labor Standards Act overtime pay accounts for about 11 percent of the example employee's pay as a tactical officer. A federal employee's high-3 average salary is the highest average basic pay earned during any 3 consecutive years of service. The high-3 average and length of service are used to calculate a federal employee's basic annuity payment. See 5 U.S.C. §§ 8331(3), 8401(3)-(4).

<sup>48</sup>Calculations are based on a fictional GS-12 step 10 tactical officer reclassifying to a GS-13 step 6 special agent position. The tactical officer pay of about \$152,500 includes about \$109,100 in base pay and \$43,400 in overtime pay. After reclassifying to special agent, approximately \$145,500 in pay includes about \$116,400 in base pay and \$29,100 in overtime pay.

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based on mandatory law enforcement retirement at age 57.<sup>49</sup> If the fictional Shadow Wolves employee had 5 years of service time available before mandatory retirement, that individual would lose about \$22,400 in total pay over those 5 years by reclassifying to special agent.<sup>50</sup> However, by earning about \$4,500 more in annual retirement compensation, the employee would make up that difference in about 5 years.<sup>51</sup> For further details on how reclassification would impact Shadow Wolves' pay and retirement compensation, see appendix II.

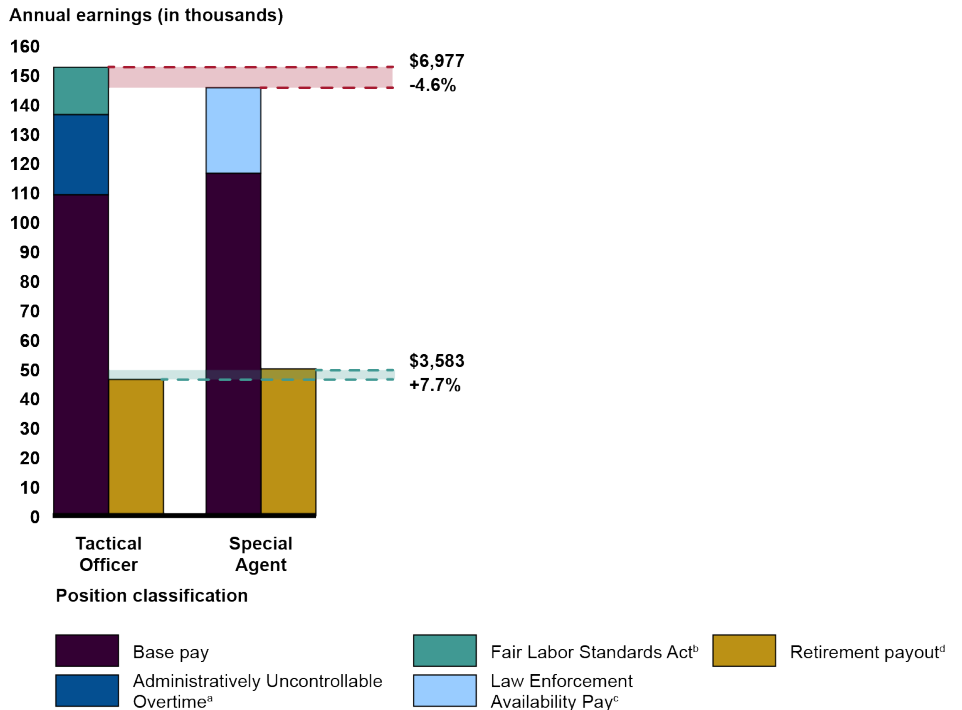
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<sup>49</sup>These figures do not account for future cost-of-living adjustments that increase annuity benefits or possible payment of the Federal Employees Retirement System annuity supplement. See 5 U.S.C. § 8421. Mandatory retirement age for law enforcement personnel is set by statute. Generally, federal law enforcement personnel must retire at the age of 57. However, if the employee has not completed 20 years of certain specialized service when they reach age 57, they are subject to mandatory retirement when they complete 20 years of certain specialized service. The head of a federal agency may exempt certain law enforcement officers from mandatory retirement until the age of 60. See 5 U.S.C. § 8425(b).

<sup>50</sup>This calculation does not include any possible pay losses Shadow Wolves who have not completed training requirements for reclassification would face during FLETC special agent training.

<sup>51</sup>After serving 5 years as a special agent, all 3 years of the employee's high-3 average salary would be based on pay at GS-13 step 7, from a within-grade increase after 2 years as a special agent.

**Figure 8: Impact of Reclassification on Fictional Shadow Wolves Employee's Pay and Retirement Compensation**



Source: GAO analysis of U.S. Immigration and Customs Enforcement (ICE) information. | GAO-24-106385

Note: Tactical officer pay calculations are based on a fictional GS-12 employee at step 10 with an hourly basic pay rate of \$52.44, working 112 hours per pay period, with 32 hours of Administratively Uncontrollable Overtime, including 26.5 hours of Fair Labor Standards Act overtime. Special agent calculations are based on a fictional GS-13 employee at step 6 with an hourly basic pay rate of \$55.96, working 112 hours per pay period, including 32 hours of Law Enforcement Availability Pay.

<sup>a</sup>Administratively Uncontrollable Overtime is paid to an employee in a position in which the hours of duty cannot be controlled administratively. Hours are paid at different rates depending on the number of irregular overtime hours worked, from 10 to 25 percent of an employee's basic pay rate. See 5 C.F.R. §§ 550.151, 550.154. Administratively Uncontrollable Overtime is considered basic pay for purposes of retirement benefits for law enforcement officers.

<sup>b</sup>Fair Labor Standards Act overtime is paid at time and a half of the hourly regular rate of pay. See 5 C.F.R. §§ 550.111, 550.103, 551.501(c), 551.541. Since Fair Labor Standards Act nonexempt Administratively Uncontrollable Overtime recipients have received straight time pay for basic and Administratively Uncontrollable Overtime hours, there is a remaining Fair Labor Standards Act obligation to pay half of the Fair Labor Standards Act hourly regular rate for Administratively uncontrollable overtime hours in excess of 85.5 hours per biweekly (80 hour) pay period. See 29 U.S.C. § 207(k); 5 C.F.R. § 551.512. Fair Labor Standards Act overtime is not included for calculating an employee's high-3 average salary for retirement compensation.

<sup>c</sup>Law Enforcement Availability Pay is equal to 25 percent of a special agent's basic pay rate and compensates for all unscheduled duty that is typically required of positions classified as special agents. See 5 C.F.R. §§ 550.181, 550.185, 550.186(a), (c). Law Enforcement Availability Pay is treated as basic pay for purposes of retirement benefits.

<sup>d</sup>Retirement pay is calculated based on high-3 average salary, the highest average basic pay earned during any 3 consecutive years of service. See 5 U.S.C. §§ 8331(3), 8401(3)-(4). Calculations are

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based on both tactical officers and special agents receiving the pay shown here, as described, for at least 3 years. After reclassifying to special agent, the example employee would be at GS-13 step 6. After 2 years, the employee would earn a within-grade increase to step 7 (to earn an hourly basic pay rate of \$57.56 based on fiscal year 2023 rates), which is reflected in the retirement calculation.

In addition, ICE has not provided Shadow Wolves with key information on all steps they must complete for reclassification. For example, ICE has not provided the Shadow Wolves information on whether they will be exempt from physical fitness, medical, or polygraph examinations during training, or whether they will be eligible to receive overtime pay during training. Of the eight current Shadow Wolves, three have not previously met the training requirements to be eligible for reclassification, and they would be required to attend the approximately 22 weeks of Federal Law Enforcement Training Centers (FLETC) training to become special agents.

- **Physical fitness examinations.** To enter FLETC's criminal investigation training program, special agents must pass a physical fitness examination. In February 2023, ICE officials told us they need to determine if Shadow Wolves will be required to meet ICE's physical fitness standards or if they may receive a waiver.<sup>52</sup> The officials said they are seeking a physical fitness waiver because the Shadow Wolves already perform at or beyond required physical fitness levels in their daily duties. ICE Office of Human Capital officials stated that HSI's executive associate director likely has the authority to waive the physical fitness requirements. However, as of October 2023, ICE has not told the existing Shadow Wolves whether they will receive such a waiver.
- **Medical examinations.** ICE has not provided information to Shadow Wolves about the possibility of waiving the medical examination required for reclassification or the consequences of failing the examination. In October 2023, ICE Office of Human Capital officials said that, to reclassify, ICE may require medical examinations for the three Shadow Wolves who have not completed FLETC's criminal investigation training program. ICE uses the medical review process to determine if there is a medical concern that limits an employee in performing their duties, and may disqualify individuals if they have a chronic disease or condition that impairs full performance of the duties. As of October 2023, ICE officials were unsure if the agency

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<sup>52</sup>Per ICE policy, the physical fitness test for criminal investigators requires Shadow Wolves reclassifying to the GS-1811 series to complete 32 sit-ups in 1 minute or less, a 220-yard sprint in 47.73 seconds or less, 22 pushups in 1 minute or less, and then a 1.5-mile run in 14 minutes and 25 seconds or less.

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has the authority to waive a medical review in its entirety for current Shadow Wolves.

- **Polygraph examinations.** ICE has not informed Shadow Wolves whether a polygraph examination is required for reclassification. In October 2023, ICE Office of Human Capital officials said they attempted to inform Shadow Wolves in December 2022 that a polygraph was not required for reclassification because the current Shadow Wolves are not new entry-level hires.<sup>53</sup> However, in April 2023, Shadow Wolves members told us they believed they would be subject to a polygraph examination if they choose to reclassify.
- **Eligibility for overtime pay during training.** ICE Office of Human Capital officials told us they do not believe that current Shadow Wolves will be eligible to receive any overtime pay while at FLETC for training. New ICE special agents generally receive LEAP pay while participating in FLETC criminal investigation training, according to ICE policy. ICE Office of Human Capital officials told us that since the Shadow Wolves Enhancement Act states that Shadow Wolves must complete FLETC training before they can reclassify to special agent, they would not qualify for LEAP pay like employees hired as special agents. Further, since the Shadow Wolves would be in training, they would no longer receive overtime pay from their tactical officer duties. However, ICE has not informed Shadow Wolves about how completing FLETC training required for reclassification would affect their pay. According to our analysis, by attending training required for reclassification, the fictional Shadow Wolves employee's pay would decrease by about \$18,000 (12 percent) in the 12-month period ending with the completion of FLETC special agent training.

ICE's Shadow Wolves Enhancement Act strategy states that each member of the Shadow Wolves will receive the information they need to make a well-informed decision about whether to request reclassification to the special agent job series. In addition, ICE's April 2022 action plan for implementing the Shadow Wolves Enhancement Act states that the agency will identify the advantages and disadvantages of differences in compensation associated with reclassification and communicate those

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<sup>53</sup>According to ICE officials, applicants for special agent positions may be required to successfully pass a polygraph examination. For example, documentation on preemployment requirements for GS-1811 criminal investigators states that the agency conducts polygraphs with a risk-based approach, such as in response to background investigation findings.

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differences to the Shadow Wolves for individual decision-making on reclassification.

As called for in the action plan, ICE officials said the agency planned to provide individualized information on how reclassification would affect compensation. Officials directed Shadow Wolves to a specific point of contact to obtain that information. However, ICE has not provided Shadow Wolves with individualized information on how reclassification would affect their compensation, or what steps are needed to complete reclassification, because no Shadow Wolves have informed ICE that they plan to reclassify. Moreover, some Shadow Wolves members told us that they have not elected to reclassify because they have not been provided with information on the reclassification process and how it would affect them.

Given the Shadow Wolves' survey responses on the important role pay and retirement compensation have on their retention, obtaining individualized pay and retirement information is central to their decisions on whether to reclassify. Providing Shadow Wolves individualized information about how reclassification would affect their pay and retirement compensation, as well as the steps needed to reclassify, would enable each employee to make an informed decision about whether reclassification is appropriate for them.

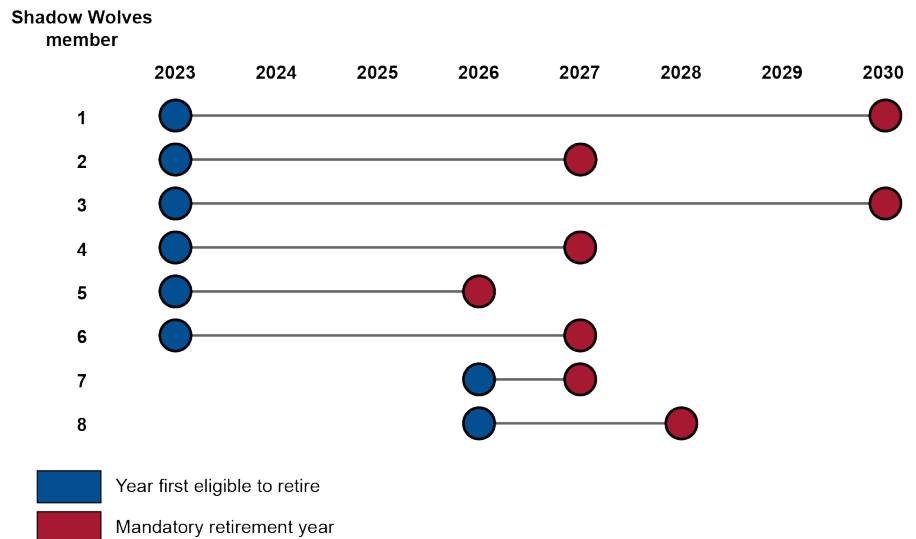
### ICE Has Not Planned for Impending Shadow Wolves' Retirements

ICE has not planned for how upcoming retirements will affect the program's succession efforts, including training for future members, which will be reliant on current members' knowledge and experience. More specifically, six of the eight current Shadow Wolves are already eligible to retire, with the remaining two eligible in fiscal year 2026. All eight Shadow Wolves will be subject to mandatory retirement by the end of fiscal year 2030, including one by the end of fiscal year 2026 and an additional four by the end of fiscal year 2027 (see fig. 9).<sup>54</sup>

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<sup>54</sup>Mandatory retirement age for federal law enforcement personnel is set by statute. Generally, federal law enforcement personnel must retire at the age of 57. However, if the employee has not completed 20 years of certain specialized service when they reach age 57, they are subject to mandatory retirement when they complete 20 years of certain specialized service. See 5 U.S.C. § 8425(b).

**Figure 9: Timeline of Current Shadow Wolves' Retirement Eligibility and Mandatory Retirement by Fiscal Year**



Source: GAO analysis of U.S. Immigration and Customs Enforcement information. | GAO-24-106385

Note: Mandatory retirement age for federal law enforcement personnel is set by statute. Generally, federal law enforcement personnel must retire at the age of 57. However, if the employee has not completed 20 years of certain specialized federal service when they reach age 57, they are subject to mandatory retirement when they complete 20 years of certain specialized federal service. The head of a federal agency may exempt certain law enforcement officers from mandatory retirement until the age of 60. See 5 U.S.C. § 8425(b). The President may exempt certain employees from automatic separation if the President determines the public interest so requires. See 5 U.S.C. § 8425(e).

ICE officials stated that they plan to use experienced Shadow Wolves to train new recruits in traditional tracking skills, Shadow Wolves unit culture, program history, and Tohono O’odham culture. However, Shadow Wolves have specialized skills that may be time-intensive for new employees to learn. According to current Shadow Wolves members, traditional tracking is particularly time-intensive to learn, and they estimate it could take up to 2 years of daily tracking for new recruits to become proficient in the skill.

The Shadow Wolves Enhancement Act required ICE to develop a strategy for retaining existing Shadow Wolves. As discussed above, ICE’s strategy identified reclassification to special agents as the primary retention strategy for existing Shadow Wolves. However, ICE has not developed a succession plan for the program to ensure the agency retains experienced Shadow Wolves to train new recruits. If the existing Shadow Wolves retire before they can provide such training, ICE officials



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said they may rehire retired Shadow Wolves officials to assist with training, but they have not documented these plans.<sup>55</sup>

In June 2023, ICE officials said that they have not conducted succession planning for the program because they were waiting until they obtained new Schedule A hiring authority to hire new employees. ICE obtained the new hiring authority in August 2023. However, ICE did not require this authority to hire new Shadow Wolves. This is because ICE, prior to receiving the new authority, already had and continues to have the authority to hire up to a total of 25 Shadow Wolves as tactical officers. Moreover, since April 2022, ICE also has had the authority to reclassify new hires to special agent.

ICE's Criminal Investigator Hiring and Career Progression directive states that succession planning is critical to ensuring that field personnel possess the appropriate balance of investigative and operational experience necessary to support the agency's mission.<sup>56</sup> Without taking timely action to develop a succession plan, ICE runs the risk that existing Shadow Wolves will retire before they are able to train new Shadow Wolves. Developing a succession plan outlining actions and timelines needed for knowledge transfer would provide ICE greater assurance that new Shadow Wolves will have the necessary knowledge and skills to fulfill the program's mission.

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### Shadow Wolves' Status in the Excepted Service Offers Limited Career Opportunities

Shadow Wolves perform the same duties as HSI special agents, who are members of the competitive service, according to ICE officials. However, according to ICE's Shadow Wolves Enhancement Act strategy, Shadow Wolves do not have the same career opportunities as other HSI special agents because of the limitations of the program's excepted service hiring authority.<sup>57</sup> For example, Shadow Wolves cannot apply for merit promotions in the competitive service and instead must compete against

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<sup>55</sup>Though mandatory retirement age for federal law enforcement personnel is set by statute, the head of a federal agency may exempt certain law enforcement officers from mandatory retirement until the age of 60. See 5 U.S.C. § 8425(b). The President may exempt certain employees from automatic separation if the President determines the public interest so requires. See 5 U.S.C. § 8425(e).

<sup>56</sup>ICE, *Criminal Investigator Hiring and Career Progression*, Directive 1002.2 (December 7, 2010).

<sup>57</sup>According to ICE Office of Human Capital officials, the Shadow Wolves are ICE's only law enforcement personnel "permanently" in the excepted service.

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the general public for new positions.<sup>58</sup> In addition, Shadow Wolves cannot move laterally to other offices or positions within the federal government. Instead, they are currently limited to the Tohono O’odham Nation reservation.<sup>59</sup> ICE does not have authority to convert Shadow Wolves from the excepted to the competitive service.

While not providing for conversion authority to the competitive service, ICE’s new hiring authority for the Shadow Wolves program—which OPM authorized in August 2023—may provide Shadow Wolves hired under that authority with more career advancement opportunities.<sup>60</sup> First, the new hiring authority allows ICE to create GS-14 excepted service positions within the Shadow Wolves program. Therefore, ICE now has authority to create GS-14 supervisory special agent positions within the excepted service, which could provide Shadow Wolves opportunity for career advancement within the program as special agents. However, according to ICE Office of Human Capital officials, the current size of the Shadow Wolves program may not warrant a dedicated GS-14 supervisory special agent position. As of October 2023, ICE had not decided whether to create GS-14 Shadow Wolves positions within the excepted service.

Second, the new hiring authority allows ICE to expand the Shadow Wolves program to other tribal lands near international borders with Canada and Mexico. If ICE expands the Shadow Wolves program to new locations, Shadow Wolves could potentially have the opportunity to move

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<sup>58</sup>An excepted service employee cannot apply for a merit promotion unless the employee’s agency has an interchange agreement with OPM that gives the employee the option to apply for merit promotions in the competitive service. OPM officials stated that an interchange agreement is not an option for converting Shadow Wolves to the competitive service because interchange agreements are only used for excepted service personnel systems outside of Title 5 of the U.S. Code. The Schedule A appointment authority used to hire Shadow Wolves is granted under Title 5 of the U.S. Code.

<sup>59</sup>From the start of the Shadow Wolves program in 1974 until August 2023, the program’s hiring authority only allowed the Shadow Wolves program to hire employees on the Tohono O’odham Nation reservation. In August 2023, ICE obtained new hiring authority from OPM that allows the agency to hire Shadow Wolves to expansion locations near the U.S.-Canada and U.S.-Mexico borders. As of October 2023, ICE is evaluating the feasibility and appropriateness of creating expansion locations outside of the Tohono O’odham Nation reservation.

<sup>60</sup>Although ICE retains its pre-August 2023 hiring authority, ICE officials told us they do not intend to use the pre-August 2023 hiring authority to hire new Shadow Wolves.

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to those locations.<sup>61</sup> However, Shadow Wolves still would not be able to relocate to HSI offices that do not have a Shadow Wolves unit and, as we will discuss later in this report, ICE had not determined whether it will expand the Shadow Wolves program outside of Sells, Arizona, as of October 2023. According to Shadow Wolves members, being limited to a single office poses challenges because HSI special agents typically advance their careers by moving between HSI offices.

ICE Office of Human Capital officials and OPM officials said that authority to convert Shadow Wolves to the competitive service requires either legislation or an executive order. ICE officials said that obtaining the authority to convert Shadow Wolves to the competitive service remains their preferred method to address career limitations, and the agency has taken steps to pursue conversion authority. For example, ICE officials told us that they met with congressional staff in June 2023 to discuss ICE's goal for an amendment to the Shadow Wolves Enhancement Act that would grant ICE conversion authority. During that meeting, ICE provided congressional staff with proposed language for a legislative amendment that would authorize ICE to convert Shadow Wolves to the competitive service upon successful completion of 3 years of satisfactory service. ICE is also pursuing an executive order based on its proposed language and has met with White House officials to discuss an executive order. ICE officials said they would consider creating GS-14 supervisory special agent positions in the excepted service as an option for providing Shadow Wolves upward mobility if the agency is unable to obtain the authority to convert Shadow Wolves to the competitive service.

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## ICE Has Begun Evaluating Shadow Wolves Expansion Locations but Does Not Have Evaluation Criteria

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<sup>61</sup>For example, Shadow Wolves special agents could potentially serve in expansion locations. In addition, ICE officials told us that they are examining whether Shadow Wolves tactical officers would have the ability to transfer to any future expansion locations.

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## ICE Evaluated Expansion Locations in 2009 but Determined Expansion Was Not Appropriate

ICE previously considered expansion of the Shadow Wolves program to the northern border but ultimately determined expansion was not appropriate. Specifically, from 2007 to 2009, ICE considered three northern border locations for expansion but ultimately decided not to expand because the limited smuggling activity in those areas did not justify the cost, among other reasons discussed below.

In 2007, ICE identified three reservations with an immediate nexus to the U.S.-Canada border: the Blackfeet Indian Reservation in Montana, the Chippewa Bay Mills Indian Reservation in Michigan, and the Saint Regis Mohawk Reservation in New York. Although ICE identified the Saint Regis Mohawk Reservation as having the most illegal smuggling activity of the three locations, Saint Regis Mohawk tribal leaders did not support hosting a Shadow Wolves unit at that time. Therefore, ICE proceeded with assessing the feasibility and appropriateness of creating Shadow Wolves units at the other two locations.

In September 2009, ICE determined that Blackfeet Nation was the most viable option for expansion and conducted a cost estimate. ICE estimated that creating a Shadow Wolves unit in Blackfeet Nation would cost \$4.3 million for the first year, including \$2.6 million in personnel costs.<sup>62</sup> ICE's estimate was based on hiring 11 Shadow Wolves officers, one senior Shadow Wolves officer, two investigative assistants, and two support staff. The remaining estimated costs were for training, equipment and maintenance, and facilities.

Ultimately, ICE decided not to expand the program to the northern border due to a lack of smuggling activity, the limited number of Shadow Wolves available to train new hires, and potential damage to ICE's relationship with CBP.

- **Lack of smuggling activity.** ICE determined that, due to the lack of smuggling activity at the two northern border locations, there would not be enough workload to justify the expense of expansion. In addition, the agency determined that a permanent deployment might not be necessary since during the winter months the passes that smugglers could use to move illicit goods or people were closed due to inclement weather.

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<sup>62</sup>The \$4.33 million estimate in fiscal year 2010 equates to about \$5.66 million in fiscal year 2022 adjusted for inflation.

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- **Limited number of Shadow Wolves to conduct training.** ICE determined that any expansion would require experienced Shadow Wolves to deploy from the Tohono O’odham Nation reservation to northern border locations to help establish and train new hires. ICE determined in 2009 that any long-term deployment would negatively impact the effectiveness of the Shadow Wolves on the Tohono O’odham Nation reservation, as the agency found that the unit was understaffed at that time.
  - **Relationship with CBP.** A 2009 ICE memo stated that expanding the Shadow Wolves program could damage ICE’s relationship with CBP. Specifically, the memo stated that CBP’s Border Patrol viewed the Shadow Wolves program’s mission as duplicative with Border Patrol’s mission and considered attempts to expand the Shadow Wolves program beyond the Tohono O’odham Nation reservation as an encroachment onto Border Patrol’s interdiction mission. However, in June 2023, Border Patrol officials said they are now supportive of expanding the Shadow Wolves program to other locations because it would bring additional resources to help secure the border and stop smuggling operations on reservations. In addition, an ICE official said that while Shadow Wolves’ duties used to overlap with Border Patrol agents, there is little overlap since the Shadow Wolves’ duties shifted to investigation.

Although ICE determined in 2009 that expanding the Shadow Wolves program was not appropriate, the evaluation process improved relationships and coordination between the agency and the respective tribal governments at northern border locations, according to ICE documentation. For example, after ICE evaluated northern border locations for expansion, Blackfeet Nation sent law enforcement personnel to the Tohono O’odham Nation reservation to conduct follow-up training with the Shadow Wolves. In addition, as of July 2023, Blackfeet Nation officials continue to visit the Shadow Wolves on the Tohono O’odham Nation regularly.

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## ICE Does Not Have Criteria for Evaluating Expansion Locations

ICE’s October 2022 Shadow Wolves Enhancement Act strategy described the agency’s plans at a high level for evaluating the expansion of the Shadow Wolves program, but ICE has not developed criteria for evaluating potential expansion locations. More specifically, the strategy stated that ICE will need to consult with tribal governments as part of its evaluation process because the agency needs their approval and consent for hosting Shadow Wolves units. The strategy also stated that ICE will need to engage with HSI Special Agent in Charge offices near those tribal lands because those offices would oversee the new units. Finally, the

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strategy stated that ICE lacked the authority to hire Shadow Wolves outside of the Tohono O’odham Nation without modification to its Schedule A hiring authority. Specifically, ICE stated that based on its hiring authority at the time, the agency could not expand the program to other tribal lands. For example, at the time, ICE only had authority to hire new Shadow Wolves on the Tohono O’odham Nation reservation. As discussed above, in August 2023, ICE received authority to hire Shadow Wolves outside the Tohono O’odham Nation reservation in locations near the U.S.-Mexico and U.S.-Canada borders.

ICE plans to initially evaluate two possible expansion locations where tribal leaders have expressed interest in hosting a new Shadow Wolves unit: the Blackfeet Indian Reservation and the Saint Regis Mohawk Reservation. While other tribal governments have also expressed interest in hosting a new Shadow Wolves unit, ICE plans to prioritize evaluating the two northern border locations because the agency previously considered those locations for expansion, according to ICE officials. In addition, the officials said the agency wants to complete the evaluation process for the two northern border locations and show it can create expansion units before pursuing expansion to other locations.

While ICE evaluated the two northern border locations for expansion in 2009 and decided expansion was not appropriate, ICE officials stated that conditions have changed that could make expansion appropriate at this time. For example, in June 2023, ICE officials said threats have changed along the northern border since 2009, as transnational criminal organizations have expanded operations into tribal lands and expanded into different types of criminal activity.

ICE has outlined the general steps the agency plans to follow as part of its process to evaluate possible expansion locations for the Shadow Wolves program. This includes coordination with tribal governments, engagement with HSI field offices, and site visits to possible expansion locations. However, ICE had not developed criteria for how to evaluate and select expansion locations as of October 2023.

**Coordination with tribal governments.** In February 2023, an ICE official met with members of the Blackfeet Nation tribal council about expanding the Shadow Wolves program and gave an overview of the steps the agency must complete before deciding whether to create a new unit.

In June 2023, ICE officials told us they decided not to advance discussions with Tribes on expansion until ICE obtained the authority

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needed for expansion. The officials said that in discussions with tribal leaders, they want to be careful not to overpromise, including advancing discussions on expansion before ICE had the authority needed to create and operate a new unit. In August 2023, ICE obtained a new hiring authority, which enables the agency to hire Shadow Wolves regardless of location. ICE officials told us in October 2023 that with this new authority, they plan to reengage with Tribes on expansion.

**Engagement with HSI field offices.** ICE plans to engage with HSI field offices at the local level to assess whether creating a Shadow Wolves unit in their regions is feasible and necessary to address HSI priorities. For example, ICE officials said a dialogue with the HSI Special Agent in Charge offices overseeing these areas is important because those offices would oversee any new Shadow Wolves unit and its employees, just as the HSI Phoenix Special Agent in Charge office oversees the Shadow Wolves unit that operates on the Tohono O’odham Nation reservation. In addition, ICE officials said they need to brief HSI field officials on the Shadow Wolves program and its benefits to their region. Finally, since there is not a separate pool of funding for the Shadow Wolves program, staffing a new Shadow Wolves unit would require the agency to identify additional resources from other sources, according to ICE officials. Therefore, according to HSI field officials, HSI field offices must desire a Shadow Wolves unit because funding for a new Shadow Wolves unit would come from the office’s budget.

In December 2022, ICE officials had held initial discussions about expansion with the HSI Buffalo Special Agent in Charge office, which would oversee any Shadow Wolves unit on the Saint Regis Mohawk Reservation. In February 2023, ICE officials met with the HSI Denver Special Agent in Charge office as part of their assessment for a unit on Blackfeet Nation. ICE officials said they used these discussions to learn about the office’s personnel footprint, the types of crimes they investigate, and how they engage with Tribes.

**Site visits to potential expansion locations.** In February 2023, ICE officials told us that they planned to conduct site visits during calendar year 2023 to the first two potential locations, the Blackfeet Indian Reservation in Montana and the Saint Regis Mohawk Reservation in New York, to assess the feasibility and appropriateness of expanding to each location. They said that during the visits, ICE officials and current Shadow Wolves would meet with tribal officials, analyze smuggling threats, and conduct intelligence and resource assessments. ICE officials said in February 2023 that since smuggling activity along the northern border

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decreases during the winter, they planned to wait until the spring to assess northern border locations.

However, as of October 2023, ICE had not conducted any site visits to assess expansion locations. ICE officials stated that these visits have been delayed for two reasons. First, HSI headquarters officials attributed the delays to lack of funding. Specifically, they said in June 2023 that HSI leadership had decided not to fund the site visits until ICE had the authority to create expansion units, which it obtained in August 2023. Second, ICE officials stated that they had postponed their visit to the Blackfeet Indian Reservation until the DHS Office of Intelligence and Analysis completed a planned update to an October 2011 report on border security, smuggling threats, and vulnerabilities on or near the reservation. However, the officials said that in March 2023 they learned that DHS no longer planned to update the report due to limited resources. As a result, the officials said ICE will now be responsible for conducting a threat assessment of the Blackfeet Indian Reservation, which presents an additional cost and labor burden they had not previously expected.

ICE has described the general steps the agency plans to follow to evaluate possible expansion locations, including coordinating with tribal leaders, engaging with HSI field officials, and completing information gathering to assess the feasibility and appropriateness of expansion before ultimately determining if and where to expand. However, as of October 2023, ICE had not developed criteria for how to evaluate and select expansion locations. ICE officials said they did not develop criteria for evaluating and selecting locations because at the time they lacked the authority needed for expansion, including the ability to hire Shadow Wolves at future expansion locations, and were focused on first obtaining that authority before developing evaluation criteria. However, even before ICE obtained that authority in August 2023, ICE had already begun engaging with Tribes and HSI field offices about expansion, and ICE officials said that Tribes beyond the two potential locations have expressed interest in hosting a Shadow Wolves unit.

ICE's Shadow Wolves Enhancement Act strategy states that it is incumbent upon the agency to develop a thorough, reasoned, and balanced determination for which tribal lands would most benefit from such a unit and how that unit might align with agency priorities. By developing criteria for evaluating and selecting expansion locations for new Shadow Wolves units, ICE could help ensure agency officials evaluate locations consistently and could enable officials to track progress the agency has made in evaluating expansion. Developing



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criteria could also improve transparency of the evaluation process, including for key stakeholders such as tribal leaders, HSI field officials, and ICE human capital officials.

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## Conclusions

ICE's Shadow Wolves program helps combat transnational criminal organization activity on the Tohono O'odham Nation reservation, which has increased in recent years, according to Nation officials. While ICE's Shadow Wolves Enhancement Act strategy includes general plans for retention and recruitment of Shadow Wolves and the expansion of the program to other tribal lands, ICE can take further steps to improve its workforce planning.

Specifically, while ICE has identified changes in the operating environment of the Shadow Wolves program, the agency has not defined the current mission and goals of the program. Defining a clear mission and goals, with input from the Tohono O'odham Nation, would better position HSI to ensure that Shadow Wolves operations are achieving desired outcomes. Further, ICE has not determined the program's staffing needs, including the number of positions and skills needed, based on the program's current agency, mission, and operating environment. Once ICE defines the Shadow Wolves program's mission and goals, determining the program's staffing needs, including the number of positions and skills needed, would better position the program to develop recruitment efforts that accomplish the program's current goals on the Tohono O'odham Nation reservation.

Additionally, ICE has not developed measurable goals, timelines, and milestones for recruiting additional Shadow Wolves or a succession plan to address a workforce that is near retirement. Developing measurable goals, timeframes, and milestones can help ICE review progress, assess the effectiveness of its recruitment strategy, and adjust its recruiting strategy if the agency is not meeting defined metrics. Further, developing a succession plan outlining actions and timelines needed for knowledge transfer would provide ICE greater assurance that new Shadow Wolves will have the necessary knowledge and skills to fulfill the program's mission.

ICE also has not provided current Shadow Wolves with information on how reclassifying to the special agent position would affect their compensation. Providing current Shadow Wolves with individualized information about how reclassifying to special agent would affect pay and retirement compensation and the required steps for reclassification can help members make more informed decisions about whether

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reclassification is appropriate for them. Finally, although ICE has laid out a general plan for evaluating potential locations for expanding the Shadow Wolves program, it has not developed criteria for doing so. The agency has identified the first two locations it plans to evaluate for possible expansion. By developing criteria for evaluating and selecting potential expansion locations before it begins the evaluation process, ICE could help ensure the agency evaluates locations consistently and transparently.

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## Recommendations for Executive Action

We are making the following six recommendations to ICE:

The Director of ICE should define the mission and goals of the Shadow Wolves program, with input from the Tohono O’odham Nation. (Recommendation 1)

The Director of ICE should, after defining the mission and goals of the Shadow Wolves program, determine the staffing needs, to include the skills and number of positions necessary, for the Shadow Wolves program on the Tohono O’odham Nation reservation. (Recommendation 2)

The Director of ICE should update the Shadow Wolves Enhancement Act strategy to include measurable goals, timelines, and milestones for recruiting Shadow Wolves. (Recommendation 3)

The Director of ICE should provide each member of the Shadow Wolves with information required to make an informed decision about reclassifying to special agent. Such information includes individualized information about how reclassification would affect pay and retirement compensation and the steps each member of the Shadow Wolves must complete for reclassification. (Recommendation 4)

The Director of ICE should develop a succession plan to address upcoming retirements from the Shadow Wolves program. (Recommendation 5)

The Director of ICE should develop criteria for evaluating and selecting Shadow Wolves expansion locations. (Recommendation 6)

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## Agency and Third-Party Comments

We provided a draft of this report for review and comment to DHS and OPM. We also provided excerpts of the draft report for review and comment to the Tohono O’odham Nation. DHS concurred with all six of our recommendations. DHS’s written comments are reproduced in full in

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appendix III. DHS, OPM, and the Tohono O’odham Nation also provided technical comments, which we incorporated as appropriate.

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

If you or your staff members have any questions about this report, please contact me at (202) 512-8777 or [GamblerR@gao.gov](mailto:GamblerR@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to the report are listed in appendix IV.

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

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# Appendix I: Survey of Shadow Wolves Members on Retention and Reclassification

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To better understand employee perspectives on factors affecting recruitment and retention, including the effects of reclassification to special agent, we conducted an electronic survey of all eight members of the Shadow Wolves program.<sup>1</sup> On the basis of our interviews with U.S. Immigration and Customs Enforcement (ICE) headquarters officials, ICE Office of Human Capital officials, and Homeland Security Investigations (HSI) officials, we developed survey questions to gather information on members' perspectives regarding reclassification and retention. Our survey was composed of closed-ended questions, such as multiple-choice questions, ranking questions, and extent scale questions. We also included open-ended questions to allow respondents to provide additional information they considered relevant.

Prior to distributing our survey, we conducted a pretest of the survey instrument on April 12, 2023 with two members of the Shadow Wolves—one supervisory officer and one officer—to assess the instrument's relevance and clarity. In response to their feedback, we made modifications to the survey instrument.

The survey was administered in Qualtrics, a web-based survey platform. Through this platform, we distributed our survey on April 18, 2023 to all eight members of the Shadow Wolves program, and asked respondents to respond by April 24, 2023. We also sent a reminder email to remind Shadow Wolves members to complete the survey. We received responses from all Shadow Wolves members.

See survey questions and summarized responses below.<sup>2</sup>

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<sup>1</sup>We also developed a paper version of the survey, but all respondents provided their responses using the online survey form.

<sup>2</sup>We exclude open-ended responses to protect respondent anonymity given the limited number of members in the Shadow Wolves program.

**Appendix I: Survey of Shadow Wolves  
Members on Retention and Reclassification**

**Table 1: Survey Question 1 – Shadow Wolves’ Completion of Criminal Investigator Training**

U.S. Immigration and Customs Enforcement plans to offer each Shadow Wolves employee the option to reclassify from a GS-1801 Tactical Officer to become a GS-1811 Special Agent. In order to become a Special Agent, each Shadow Wolves employee must complete certain training requirements.

Have you completed the Federal Law Enforcement Training Center’s Criminal Investigator Training Program?

| <b>Response</b> | <b>Count</b> |
|-----------------|--------------|
| Yes             | 5            |
| No              | 3            |
| <b>Total</b>    | <b>8</b>     |

Source: GAO. | GAO-24-106385

Note: Required Federal Law Enforcement Training Centers training for reclassification to special agent includes the 56-day Criminal Investigator Training Program and the 71-day Homeland Security Investigations Special Agent Training.

**Table 2: Survey Question 2 – Shadow Wolves’ Hiring Dates**

Which of the following best describes when you were hired into the Shadow Wolves program?

| <b>Response</b>                        | <b>Count</b> |
|--|--------------|
| I was hired before March 2003          | 5            |
| I was hired during or after March 2003 | 3            |
| <b>Total</b>                           | <b>8</b>     |

Source: GAO. | GAO-24-106385

Notes: The Shadow Wolves Enhancement Act states that to reclassify to special agent, Shadow Wolves must have completed the Federal Law Enforcement Training Centers’ Criminal Investigator Training Program. In addition, Shadow Wolves hired before March 2003 must have completed the Customs Basic Enforcement School, while those hired during or after March 2003 must have completed the U.S. Immigration and Customs Enforcement Homeland Security Investigations Special Agent Training. See Pub. L. No. 117-113, § 2, 136 Stat. 1173 (2022). For the Qualtrics web-based survey, the respondent’s answer to this question determined the next question in the survey. Respondents hired before March 2003 were asked survey question 3, while the rest were asked survey question 4. This was done to accurately reflect changes in training requirements from March 2003.

**Appendix I: Survey of Shadow Wolves  
Members on Retention and Reclassification**

**Table 3: Survey Question 3 – Shadow Wolves’ Completion of Customs Basic Enforcement School**

Did you complete the Customs Basic Enforcement School?

| <b>Response</b> | <b>Count</b> |
|-----------------|--------------|
| Yes             | 5            |
| No              | 0            |
| <b>Total</b>    | <b>5</b>     |

Source: GAO. | GAO-24-106385

Notes: The Shadow Wolves Enhancement Act states that to reclassify to special agent, Shadow Wolves must have completed the Federal Law Enforcement Training Centers’ Criminal Investigator Training Program. In addition, Shadow Wolves hired before March 2003 must have completed the Customs Basic Enforcement School, while those hired during or after March 2003 must have completed the U.S. Immigration and Customs Enforcement Homeland Security Investigations Special Agent Training. See Pub. L. No. 117-113, § 2, 136 Stat. 1173 (2022). For the Qualtrics web-based survey, only respondents hired before March 2003 were asked survey question 3. This was done to accurately reflect changes in training requirements from March 2003.

**Table 4: Survey Question 4 – Shadow Wolves’ Completion of Special Agent Training**

Have you completed U.S. Immigration and Customs Enforcement Homeland Security Investigations Special Agent Training?

| <b>Response</b> | <b>Count</b> |
|-----------------|--------------|
| Yes             | 0            |
| No              | 3            |
| <b>Total</b>    | <b>3</b>     |

Source: GAO. | GAO-24-106385

Notes: The Shadow Wolves Enhancement Act states that to reclassify to special agent, Shadow Wolves must have completed the Federal Law Enforcement Training Centers’ Criminal Investigator Training Program. In addition, Shadow Wolves hired before March 2003 must have completed the Customs Basic Enforcement School, while those hired during or after March 2003 must have completed the U.S. Immigration and Customs Enforcement Homeland Security Investigations Special Agent Training. See Pub. L. No. 117-113, § 2, 136 Stat. 1173 (2022). For the Qualtrics web-based survey, only respondents hired during or after March 2003 were asked survey question 4. This was done to accurately reflect changes in training requirements from March 2003. The abbreviation for U.S. Immigration and Customs Enforcement, ICE, was used in the survey question: “Have you completed ICE Homeland Security Investigations Special Agent Training?” While taking the survey, respondents had the option to hover over the abbreviation to see the full term.

**Table 5: Survey Question 5 – Shadow Wolves’ Plans to Reclassify to Special Agent**

Do you plan to reclassify to become a GS-1811 special agent?

| <b>Response</b> | <b>Count</b> |
|-----------------|--------------|
| Yes             | N/A*         |
| No              | N/A*         |

**Appendix I: Survey of Shadow Wolves  
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| <b>Response</b>    | <b>Count</b> |
|--------------------|--------------|
| I have not decided | N/A*         |
| <b>Total</b>       | <b>8</b>     |

Source: GAO. | GAO-24-106385

Note: N/A – Not Available. We exclude counts from our results to protect respondent anonymity given the limited number of members in the Shadow Wolves program.

**Table 6: Survey Questions 6A, 6B, and 6C – Count of Shadow Wolves’ Responses Regarding Reasons for Reclassification Decisions**

Question 6A: Why do you plan to reclassify?

Question 6B: Why do you plan to not reclassify?

Question 6C: Why are you undecided about whether to reclassify or not?

| <b>Question</b>  | <b>Count of open-ended responses</b> |
|--|--------------------------------------|
| Question 6A: Why do you plan to reclassify?                            | N/A*                                 |
| Question 6B: Why do you plan to not reclassify?                        | N/A*                                 |
| Question 6C: Why are you undecided about whether to reclassify or not? | N/A*                                 |
| <b>Total</b>   | <b>8</b>                             |

Source: GAO. | GAO-24-106385

Notes: N/A – Not Available. We exclude counts from our results to protect respondent anonymity given the limited number of members in the Shadow Wolves program. We exclude open-ended responses from our results to protect respondent anonymity given the limited number of members in the Shadow Wolves program. For the Qualtrics web-based survey, respondents were shown either question 6A, 6B, or 6C based on their response to question 5.

**Table 7: Survey Question 7 – Shadow Wolves’ Survey Responses on the Impacts of Reclassification to Special Agent**

The reclassification process may have an impact on various items, listed in the table below. When thinking about reclassifying as a GS-1811 special agent, please identify whether you view each item as a benefit or a negative for you.

| <b>Item</b>                            | <b>Count of Shadow Wolves Selecting Option</b> |   |                                  |  |                                     |
|--|--|---|----------------------------------|--|-------------------------------------|
|  | <b>This is a benefit for me</b>                | <b>Neutral (Neither a benefit nor a negative)</b> | <b>This is a negative for me</b> | <b>I don’t know if it is a benefit or a negative</b> | <b>This is not applicable to me</b> |
| Change in job responsibilities         | 3  | 1   | 2                                | 1  | 1                                   |
| Change in job title to “Special Agent” | 3  | 3   | 1                                | 0  | 1                                   |
| Training opportunities                 | 4  | 3   | 0                                | 0  | 1                                   |
| Promotion opportunities                | 5  | 1   | 0                                | 0  | 2                                   |
| Change in pay                          | 4  | 1   | 1                                | 1  | 1                                   |
| Change in retirement benefits          | 1  | 5   | 0                                | 1  | 1                                   |
| Change in overtime eligibility         | 0  | 4   | 3                                | 0  | 1                                   |

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| Item  | Count of Shadow Wolves Selecting Option |  |                           |   |                              |
|---|---|--|---------------------------|---|------------------------------|
|   | This is a benefit for me                | Neutral (Neither a benefit nor a negative) | This is a negative for me | I don't know if it is a benefit or a negative | This is not applicable to me |
| Change in supervisory status <sup>a</sup>   | 1                                       | 4  | 0                         | 0   | 3                            |
| Physical fitness testing <sup>b</sup>   | 0                                       | 6  | 1                         | 0   | 1                            |
| Medical examination <sup>c</sup>  | 0                                       | 5  | 1                         | 1   | 1                            |
| Need to master Federal Law Enforcement Training Centers (FLETC) training <sup>d</sup> | 0                                       | 4  | 0                         | 1   | 3                            |
| Time away for FLETC training <sup>e</sup>   | 0                                       | 2  | 2                         | 1   | 3                            |
| Taking polygraph test <sup>f</sup>  | 0                                       | 4  | 0                         | 2   | 2                            |

Source: GAO. | GAO-24-106385

<sup>a</sup>Within the GS-1801 tactical officer series, employees at the GS-13 grade level are supervisory employees. In the GS-1811 special agent series, supervisory positions begin at the GS-14 grade level. By reclassifying to special agent, current GS-13 Shadow Wolves would no longer be supervisory employees.

<sup>b</sup>To enter FLETC's criminal investigation training program, special agents must pass a physical fitness examination. Per U.S. Immigration and Customs Enforcement (ICE) policy, the physical fitness test for criminal investigators requires Shadow Wolves reclassifying to the GS-1811 series to complete 32 sit-ups in 1 minute or less, a 220-yard sprint in 47.73 seconds or less, 22 pushups in 1 minute or less, and then a 1.5-mile run in 14 minutes and 25 seconds or less.

<sup>c</sup>ICE may require medical examinations for the three Shadow Wolves who have not completed FLETC's criminal investigation training program. ICE uses the medical review process to determine if there is a medical concern that limits an employee in performing their duties and disqualifies individuals if they have a chronic disease or condition that impairs full performance of the duties.

<sup>d</sup>The Shadow Wolves Enhancement Act states that to reclassify to special agent, Shadow Wolves must have completed the FLETC Criminal Investigator Training Program. In addition, Shadow Wolves hired before March 2003 must have completed the Customs Basic Enforcement School, while those hired during or after March 2003 must have completed the ICE Homeland Security Investigations (HSI) Special Agent Training. See Pub. L. No. 117-113, § 2, 136 Stat. 1173 (2022). The abbreviation for FLETC was used in the survey item "Need to master FLETC training." While taking the survey, respondents had the option to hover over the abbreviation to see the full term.

<sup>e</sup>Required FLETC training for reclassification to special agent includes the 56-day Criminal Investigator Training Program and the 71-day HSI Special Agent Training.

<sup>f</sup>ICE Office of Human Capital officials informed HSI officials that a polygraph is not required for reclassification because the current Shadow Wolves are not new entry-level hires.

**Table 8: Survey Question 8 – Shadow Wolves' Survey Rankings of the Impacts of Reclassification to Special Agent**

Please rank the top three from all of the benefits you selected, choosing the option in the first column for your top benefit and then the second and third most important in the next two columns.

| Item                                   | Count of Shadow Wolves Selecting Option |                       |                      |
|--|---|-----------------------|----------------------|
|  | Top ranked benefit                      | Second ranked benefit | Third ranked benefit |
| Change in job responsibilities         | 1                                       | 0                     | 0                    |
| Change in job title to "Special Agent" | 0                                       | 0                     | 1                    |
| Training opportunities                 | 1                                       | 1                     | 2                    |



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| Item  | Count of Shadow Wolves Selecting Option |                       |                      |
|---|---|-----------------------|----------------------|
|   | Top ranked benefit                      | Second ranked benefit | Third ranked benefit |
| Promotion opportunities   | 1                                       | 1                     | 1                    |
| Change in pay   | 0                                       | 3                     | 1                    |
| Change in retirement benefits   | 1                                       | 0                     | 0                    |
| Change in overtime eligibility  | 0                                       | 0                     | 0                    |
| Change in supervisory status <sup>a</sup>   | 1                                       | 0                     | 0                    |
| Physical fitness testing <sup>b</sup>   | 0                                       | 0                     | 0                    |
| Medical examination <sup>c</sup>  | 0                                       | 0                     | 0                    |
| Need to master Federal Law Enforcement Training Centers (FLETC) training <sup>d</sup> | 0                                       | 0                     | 0                    |
| Time away for FLETC training <sup>e</sup>   | 0                                       | 0                     | 0                    |
| Taking polygraph test <sup>f</sup>  | 0                                       | 0                     | 0                    |

Source: GAO. | GAO-24-106385

Note: Three Shadow Wolves members did not rank their top three benefits.

<sup>a</sup>Within the GS-1801 tactical officer series, employees at the GS-13 level are supervisory employees. In the GS-1811 special agent series, supervisory positions begin at the GS-14 level. By reclassifying to special agent, current GS-13 Shadow Wolves would no longer be supervisory employees.

<sup>b</sup>To enter FLETC's criminal investigation training program, special agents must pass a physical fitness examination. Per U.S. Immigration and Customs Enforcement (ICE) policy, the physical fitness test for criminal investigators requires Shadow Wolves reclassifying to the GS-1811 series to complete 32 sit-ups in 1 minute or less, a 220-yard sprint in 47.73 seconds or less, 22 pushups in 1 minute or less, and then a 1.5-mile run in 14 minutes and 25 seconds or less.

<sup>c</sup>ICE may require medical examinations for the three Shadow Wolves who have not completed FLETC's criminal investigation training program. ICE uses the medical review process to determine if there is a medical concern that limits an employee in performing their duties and disqualifies individuals if they have a chronic disease or condition that impairs full performance of the duties.

<sup>d</sup>The Shadow Wolves Enhancement Act states that to reclassify to special agent, Shadow Wolves must have completed the FLETC Criminal Investigator Training Program. In addition, Shadow Wolves hired before March 2003 must have completed the Customs Basic Enforcement School, while those hired during or after March 2003 must have completed the ICE Homeland Security Investigations (HSI) Special Agent Training. See Pub. L. No. 117-113, § 2, 136 Stat. 1173 (2022). The abbreviation for FLETC was used in the survey item "Need to master FLETC training." While taking the survey, respondents had the option to hover over the abbreviation to see the full term.

<sup>e</sup>Required FLETC training for reclassification to special agent includes the 56-day Criminal Investigator Training Program and the 71-day HSI Special Agent Training.

<sup>f</sup>ICE Office of Human Capital officials informed HSI officials that a polygraph is not required for reclassification because the current Shadow Wolves are not new entry-level hires.

**Appendix I: Survey of Shadow Wolves  
Members on Retention and Reclassification**

**Table 9: Survey Question 9 – Shadow Wolves’ Perspective on Other Benefits of Reclassifying**

Are there any other factors that would benefit you by reclassifying?

| Response     | Count    |
|--------------|----------|
| Yes          | 1        |
| No           | 7        |
| <b>Total</b> | <b>8</b> |

Source: GAO. | GAO-24-106385

Notes: We exclude open-ended responses from our results to protect respondent anonymity given the limited number of employees in the Shadow Wolves program. For the Qualtrics web-based survey, respondents answering yes received a follow-up question with the prompt, “Yes, other benefits are” and an entry form for open-ended responses.

**Table 10: Survey Question 10 – Shadow Wolves’ Perspective on Other Negatives of Reclassifying**

Are there any other negatives that would occur to you by reclassifying?

| Response     | Count    |
|--------------|----------|
| Yes          | 4        |
| No           | 4        |
| <b>Total</b> | <b>8</b> |

Source: GAO. | GAO-24-106385

Notes: We exclude open-ended responses from our results to protect respondent anonymity given the limited number of employees in the Shadow Wolves program. For the Qualtrics web-based survey, respondents answering yes received a follow-up question with the prompt, “Yes, other negatives are” and an entry form for open-ended responses.

**Table 11: Survey Question 11 – Shadow Wolves’ Survey Rankings of Items Affecting Desire to Stay with Program**

Please identify how important each of the following items are when thinking about which potential changes would make you want to stay with the Shadow Wolves program.

| Item  | Count of Shadow Wolves Selecting Option |                      |                |
|---|---|----------------------|----------------|
|   | Not at all important                    | Moderately important | Very important |
| Higher pay  | 1                                       | 3                    | 4              |
| Higher retirement compensation  | 0                                       | 4                    | 4              |
| Greater promotion opportunities   | 1                                       | 3                    | 4              |
| Opportunity to work in another Homeland Security Investigations office          | 4                                       | 2                    | 2              |
| Opportunity to service in a new Shadow Wolves unit on a different Tribal Nation | 2                                       | 3                    | 3              |
| Changes in job duties   | 3                                       | 3                    | 2              |

**Appendix I: Survey of Shadow Wolves  
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| Item  | Count of Shadow Wolves Selecting Option |                      |                |
|---|---|----------------------|----------------|
|   | Not at all important                    | Moderately important | Very important |
| More flexibility in the numbers of hours worked each week | 3                                       | 4                    | 1              |
| More flexibility in work schedule                         | 3                                       | 4                    | 1              |

Source: GAO. | GAO-24-106385

**Table 12: Survey Question 12 – Shadow Wolves’ Survey Rankings of Items Affecting Desire to Leave Program**

Please identify how important each of the following items are when thinking about what would make you want to leave the Shadow Wolves program.

| Item  | Count of Shadow Wolves Selecting Option |                      |                |
|---|---|----------------------|----------------|
|   | Not at all important                    | Moderately important | Very important |
| Current pay   | 5                                       | 0                    | 3              |
| Current retirement compensation                                   | 2                                       | 4                    | 2              |
| Current overtime compensation                                     | 4                                       | 2                    | 2              |
| Current promotion opportunities                                   | 4                                       | 2                    | 2              |
| Desire to work in another Homeland Security Investigations office | 4                                       | 3                    | 1              |
| Desire to work at another federal agency                          | 5                                       | 2                    | 1              |
| Job duties  | 4                                       | 3                    | 1              |
| Number of hours worked each week                                  | 3                                       | 5                    | 0              |
| Current schedule flexibility                                      | 4                                       | 4                    | 0              |

Source: GAO. | GAO-24-106385

**Table 13: Survey Question 13 – Shadow Wolves’ Retirement Plans**

When do you plan to retire from federal service?

| Response                 | Count    |
|--------------------------|----------|
| In less than three years | N/A*     |
| In 3-5 years             | N/A*     |
| In 6-8 years             | N/A*     |
| In more than 8 years     | N/A*     |
| <b>Total</b>             | <b>8</b> |

Source: GAO. | GAO-24-106385

Notes: N/A – Not Available. We exclude counts from our results to protect respondent anonymity given the limited number of members in the Shadow Wolves program. Mandatory retirement age for federal law enforcement personnel is set by statute. Generally, federal law enforcement personnel must retire at the age of 57. However, if the employee has not completed 20 years of certain specialized service when they reach age 57, they are subject to mandatory retirement when they complete 20 years of certain specialized service. See 5 U.S.C. § 8425(b).

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**Table 14: Survey Question 14 – Shadow Wolves’ Birth Years**

In order to determine a federal law enforcement retirement timeframe, please provide the month and year you were born.

| <b>Responses</b> | <b>Count</b> |
|------------------|--------------|
| <b>Total</b>     | <b>8</b>     |

Source: GAO. | GAO-24-106385

Notes: We exclude respondents’ answers to this question to protect respondent’s personal identifiable information given the limited number of employees in the Shadow Wolves program. Mandatory retirement age for federal law enforcement personnel is set by statute. Generally, federal law enforcement personnel must retire at the age of 57. However, if the employee has not completed 20 years of certain specialized service when they reach age 57, they are subject to mandatory retirement when they complete 20 years of certain specialized service. See 5 U.S.C. § 8425(b).

**Table 15: Survey Question 15 – Shadow Wolves’ Perspective on Other Benefits of  
Reclassifying**

Is there any additional information you would like to share with us?

| <b>Response</b> | <b>Count</b> |
|-----------------|--------------|
| Yes             | 2            |
| No              | 6            |
| <b>Total</b>    | <b>8</b>     |

Source: GAO. | GAO-24-106385

Notes: For the Qualtrics web-based survey, respondents answering yes received a follow-up question with the prompt, “Yes, I would like to share the following:” and an entry form for open-ended responses. We exclude open-ended responses from our results to protect respondent anonymity given the limited number of members in the Shadow Wolves program.

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# Appendix II: Analysis of Reclassification's Impact on Shadow Wolves Compensation

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We conducted an analysis of how reclassification from tactical officer to special agent would impact Shadow Wolves employees' pay and retirement compensation, based on factors common to members of the unit.

The exact impact of reclassification on pay and retirement compensation differs for each Shadow Wolves employee, depending on unique inputs such as the number of work hours and base pay. We based our analysis on a fictional Shadow Wolves employee. To identify appropriate inputs for our analysis, we reviewed applicable U.S. Immigration and Customs Enforcement (ICE) and Office of Personnel Management (OPM) human capital policies, reviewed program documentation, and interviewed ICE officials and Shadow Wolves members. We also provided this analysis to ICE and OPM payroll and retirement specialists and incorporated their technical comments as appropriate. While the specific effects of reclassification for each employee will differ from the example, many of the current Shadow Wolves have similar characteristics to that of the fictional employee and would therefore experience similar trends in pay and retirement compensation.

For the purposes of this analysis, we assumed a fictional Shadow Wolves employee who is currently a GS-12 tactical officer is paid at the GS-12 step 10 pay rate in the Tucson/Nogales, Arizona, locality pay area and works 112 hours per biweekly pay period. We selected the GS-12 tactical officer position because six of the eight Shadow Wolves are GS-12 tactical officers.<sup>1</sup> We assumed a pay rate of GS-12 step 10 based on the average time in service of the existing Shadow Wolves.<sup>2</sup> We selected the Tucson/Nogales locality pay area because all Shadow Wolves are based on the Tohono O'odham Nation reservation, which falls within the Tucson/Nogales, Arizona, locality pay area as defined by OPM. We assumed that the fictional Shadow Wolves employee works 112 hours per biweekly pay period because, according to Shadow Wolves supervisors and officers we interviewed, members of the unit work about

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<sup>1</sup>The other two members of the unit are GS-13 supervisory tactical officers as of October 2023.

<sup>2</sup>Federal employees in the general schedule (GS) system earn within-grade step increases based on an acceptable level of performance and longevity. 5 U.S.C. § 5335(a). This includes waiting periods of 1 year at steps 1–3, 2 years at steps 4–6, and 3 years at steps 7–9. It normally takes 18 years to advance from step 1 to step 10 within a single GS grade if an employee remains in that grade, according to OPM. Since the GS-12 Shadow Wolves have time in service ranging from about 15 to more than 25 years, we selected GS-12 step 10 since it is likely most or all have reached that grade and step.

112 hours in a typical pay period.<sup>3</sup> Based on these inputs, the fictional employee's hourly base rate for fiscal year 2023 was \$52.44. After reclassification to special agent, we assumed that the fictional employee would be paid at the GS-13 step 6 pay rate, with an hourly base pay rate of \$55.96 for fiscal year 2023, based on applicable OPM and ICE human capital policies.<sup>4</sup>

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### Compensation for Shadow Wolves Tactical Officers

The fictional Shadow Wolves GS-1801 tactical officer in our analysis earns about \$152,500 in pay annually, based on 112 work hours each pay period. About 28.5 percent of the tactical officer's pay is from overtime. Table 16 shows a breakdown of the employee's pay, including overtime pay applicable to the tactical officer job series. Specifically, Shadow Wolves tactical officers receive two forms of overtime pay: (1) Fair Labor Standards Act (FLSA) overtime<sup>5</sup> and (2) Administratively Uncontrollable Overtime (AUO).<sup>6</sup> They earn overtime pay for hours worked in excess of an 80-hour, 2-week pay period. Based on the irregular overtime hours Shadow Wolves typically work, they receive an additional 25 percent of their basic pay rate for the 80 hours in the period,

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<sup>3</sup>This analysis includes calculations based on an average of 112 work hours per pay period. It does not account for the effects of the example employee taking leave or other paid time off. Shadow Wolves employees told us that they do not take leave often in order to maintain a higher Administratively Uncontrollable Overtime rate.

<sup>4</sup>The standard method for OPM's two-step promotion rule applies to employees covered by the same pay schedules before and after promotion. See 5 U.S.C. § 5334(b); 5 C.F.R. § 531.214(d)(3). According to ICE officials, GS-12 Shadow Wolves must reclassify to special agent at the same grade level, but would likely be promoted to GS-13 quickly after reclassifying. Specifically, since most Shadow Wolves have likely already met work experience and performance requirements for promotion to GS-13, they would likely be promoted right away to GS-13, possibly within one pay period.

<sup>5</sup>FLSA overtime is either regular overtime or irregular overtime. Regular overtime is scheduled prior to the administrative work week, while irregular overtime is ordered and approved during the same administrative work week. FLSA overtime is paid at one and a half times the hourly regular rate of pay for all hours above the applicable threshold. See 5 C.F.R. §§ 550.111, 550.103, 551.501(c), 551.541. Since FLSA-nonexempt AUO recipients have received straight time pay for basic and AUO hours, there is a remaining FLSA obligation to pay half of the FLSA hourly regular rate for AUO hours in excess of 85.5 hours per biweekly (80 hour) pay period. See 29 U.S.C. § 207(k); 5 C.F.R. § 551.512.

<sup>6</sup>AUO is paid to an employee in a position in which the hours of duty cannot be controlled administratively and requires substantial amounts of irregular or occasional overtime work. The employee is generally responsible for recognizing, without supervision, circumstances which require the employee to remain on duty. If an employee qualifies for AUO pay, all irregular overtime hours are compensated by AUO pay. Hours that fall under AUO are paid at different rates depending on the number of irregular overtime hours worked, from 10 to 25 percent of an employee's basic pay rate. See 5 C.F.R. §§ 550.151, 550.154.

**Appendix II: Analysis of Reclassification's  
Impact on Shadow Wolves Compensation**

which is the maximum level for AOU compensation.<sup>7</sup> In addition, they typically receive FLSA overtime, paid at an additional 50 percent of the hourly regular rate of pay for each hour worked in excess of 85.5 hours in the pay period.

**Table 16: Pay for Example Shadow Wolves GS-1801 (Grade 12 Step 10) Tactical Officer, Fiscal Year 2023**

| Pay category  | Premium pay value            | Pay period total compensation | Work hours per pay period      | Hourly pay rate      | Percentage of total pay | Annual pay (26 pay periods) |
|---|------------------------------|-------------------------------|--------------------------------|----------------------|-------------------------|-----------------------------|
| Base hours  | N/A                          | \$4,195.20                    | 80                             | \$52.44              | 71.5%                   | \$109,075                   |
| Administratively Uncontrollable Overtime (AUO) <sup>a</sup> | 25 percent of basic pay      | \$1,048.80                    | 9+ hours per week <sup>b</sup> | \$13.11 <sup>c</sup> | 17.9%                   | \$27,269                    |
| Fair Labor Standards Act overtime (FLSA) <sup>d</sup>       | 50 percent per overtime hour | \$620.37                      | 26.5                           | \$23.41              | 10.6%                   | \$16,129                    |
| <b>Total</b>  |                              | <b>\$5,864.37</b>             | <b>112</b>                     |                      |                         | <b>\$152,473</b>            |

Source: GAO analysis of U.S. Immigration and Customs Enforcement information. | GAO-24-106385

<sup>a</sup>AOU is paid at different rates depending on the number of irregular overtime hours worked, from 10 to 25 percent of an employee's basic pay rate. Specifically, an eligible employee who works an average number of irregular overtime hours between 3 and 5 hours per week earns a 10 percent AOU pay rate. The employee earns a 15 percent AOU pay rate by averaging between 5 and 7 AOU hours per week and earns a 20 percent AOU pay rate by averaging between 7 and 9 AOU hours per week. An employee who works over 9 AOU hours per week earns a 25 percent overtime pay rate. See 5 C.F.R. §§ 550.151, 550.154. AOU is paid with the appropriate multiplier times the 80 base hours in the pay period. This example assumes no leave without pay or other nonpay status hours. AOU pay is based on paid basic pay.

<sup>b</sup>Since an average typical work week for Shadow Wolves is about 56 hours according to Shadow Wolves officers and supervisors, they average 16 AOU hours per week, which is more than the 9 hours per week required for the highest AOU multiplier of 25 percent. This example assumes that Shadow Wolves have no regularly scheduled overtime hours.

<sup>c</sup>The \$13.11 AOU hourly rate is 25 percent of the hourly rate of basic pay of \$52.44. The hourly AOU payment is determined by multiplying the AOU amount by the 80 base hours, assuming all 80 base hours are paid. Actual AOU hours can vary by pay period.

<sup>d</sup>FLSA overtime is paid at time and a half of the hourly regular rate of pay. See 5 C.F.R. §§ 550.111, 550.103, 551.501(c), 551.541. Since FLSA-nonexempt AOU recipients have received straight time pay for basic and AOU hours, there is a remaining FLSA obligation to pay half of the FLSA hourly regular rate for AOU hours in excess of 85.5 hours per biweekly (80 hour) pay period. See 29 U.S.C. § 207(k); 5 C.F.R. § 551.512.

<sup>7</sup>Specifically, an eligible employee who works an average number of irregular overtime hours between 3 and 5 hours per week earns a 10 percent AOU pay rate. The employee earns a 15 percent AOU pay rate by averaging between 5 and 7 AOU (irregular overtime) hours per week, and earns a 20 percent AOU pay rate by averaging between 7 and 9 AOU hours per week. An employee who works over 9 AOU hours per week earns a 25 percent AOU pay rate. See 5 C.F.R. §§ 550.151, 550.154. Since an average typical work week for Shadow Wolves is about 56 hours according to Shadow Wolves officers and supervisors, they average 16 AOU hours per week, which would make them eligible for the highest AOU multiplier of 25 percent.

**Appendix II: Analysis of Reclassification's Impact on Shadow Wolves Compensation**

**Compensation After  
Reclassification to Special  
Agent**

If the fictional Shadow Wolves employee reclassifies to become a GS-1811 special agent and is paid at the GS-13, step 6 rate, they would earn about \$145,500 in annual pay. About 20 percent of the special agent's pay is from overtime. Table 17 shows a breakdown of the employee's pay, including overtime pay categories applicable to the special agent job series. Special agents operate under a different overtime pay system than tactical officers. Specifically, after reclassifying to special agent, Shadow Wolves would earn Law Enforcement Availability Pay (LEAP) but would no longer be eligible for FLSA overtime or AUO. LEAP pay is equal to 25 percent of a special agent's basic pay rate and compensates for all unscheduled duty that is typically required of special agents.<sup>8</sup> The HSI field official overseeing the unit said that they expect the number of work hours to remain comparable for any Shadow Wolves who reclassify to special agent.

**Table 17: Pay for Example Shadow Wolves GS-1811 (Grade 13 Step 6) Special Agent, Fiscal Year 2023**

| Pay category   | Premium pay value       | Pay period total compensation | Work hours     |                 | Percentage of total pay | Annual pay (26 pay periods) |
|--|-------------------------|-------------------------------|----------------|-----------------|-------------------------|-----------------------------|
|  |                         |                               | per pay period | Hourly pay rate |                         |                             |
| Base hours   | N/A                     | \$4,476.80                    | 80             | \$55.96         | 80%                     | \$116,397                   |
| Law Enforcement Availability Pay (LEAP) <sup>a</sup> | 25 percent of basic pay | \$1,119.20 <sup>b</sup>       | 32             | \$13.99         | 20%                     | \$29,099                    |
| <b>Total</b>   |                         | <b>\$5,596</b>                | <b>112</b>     |                 |                         | <b>\$145,496</b>            |

Source: GAO analysis of U.S. Immigration and Customs Enforcement information. | GAO-24-106385

Note: According to ICE officials, GS-12 Shadow Wolves must reclassify to special agent at the same grade level but would likely be promoted to GS-13 quickly after reclassifying. Specifically, since most Shadow Wolves have likely already met work experience and performance requirements for promotion to GS-13, they would likely be promoted right away to GS-13 step 6, possibly within one pay period.

<sup>a</sup>LEAP is equal to 25 percent of a special agent's basic pay rate and compensates for all unscheduled duty that is typically required of positions classified as special agents. See 5 C.F.R. §§ 550.181, 550.185, 550.186(a), (c). Employees must average 2 hours of unscheduled duty per regular work day over a 1-year period to be eligible for LEAP. See 5 C.F.R. § 550.183(a). This example assumes there are no regularly scheduled overtime hours so that LEAP is the sole compensation for overtime work.

<sup>b</sup>The \$13.99 LEAP hourly rate is 25 percent of the hourly rate of basic pay of \$55.96. LEAP compensation for the pay period is calculated by multiplying the \$13.99 LEAP hourly rate by the 80 base hours.

**Impact of Reclassification  
on Compensation**

According to our analysis, Shadow Wolves would receive a higher base pay by reclassifying, but their total annual pay would decrease because of the overtime pay system for special agents (see table 18 below). However, Shadow Wolves would receive more retirement compensation

<sup>8</sup>See 5 C.F.R. §§ 550.181, 550.185, 550.186(a), (c).



**Appendix II: Analysis of Reclassification's Impact on Shadow Wolves Compensation**

by reclassifying because a higher percentage of their pay would be eligible for their "high-3" average salary in the special agent job series.<sup>9</sup>

**Table 18: Example Retirement Compensation After Serving 3 Years as a Shadow Wolves Special Agent**

| Pay category  | Annual pay <sup>a</sup> | Annual retirement payment <sup>b</sup> | Total retirement compensation: age 57-70 <sup>c</sup> |
|---|-------------------------|--|---|
| GS-1801 Tactical Officer                              | \$152,473               | \$46,357                               | \$602,640   |
| GS-1811 Special Agent (after reclassification)        | \$145,496               | \$49,940                               | \$649,221   |
| Change from reclassifying to special agent            | -\$6,977                | \$3,583                                | \$46,581  |
| Percentage change from reclassifying to special agent | -4.6%                   | 7.7%                                   | 7.7%  |

Source: GAO analysis of U.S. Immigration and Customs Enforcement information. | GAO-24-106385

Note: This table includes the annual pay and retirement compensation the example Shadow Wolves employee would receive after reclassifying to special agent and serving 3 years in that position.

<sup>a</sup>According to ICE officials, GS-12 Shadow Wolves must reclassify to special agent at the same grade level but would likely be promoted to GS-13 quickly after reclassifying. Specifically, since most Shadow Wolves have likely already met work experience and performance requirements for promotion to GS-13, they would likely be promoted right away to GS-13 step 6, possibly within one pay period.

<sup>b</sup>This calculation is based on the employee serving 3 years as a special agent. A federal employee's "high-3" average salary is the highest average basic pay earned during any 3 consecutive years of service. The high-3 average and length of service are used to calculate a federal employee's basic annuity payment. See 5 U.S.C. §§ 8331(3), 8401(3)-(4). The Federal Employees' Retirement System formula applies to individuals hired in 1984 or later. Based on a law enforcement personnel retiring after 20 years of certain specialized service, the formula is calculated by multiplying the number of years of service, the high-3 salary, and 0.017. In this case, the high-3 would include two years of pay at GS-13 step 6, and one year at GS-13 step 7 due to a within-grade increase after 2 years. FLSA overtime is not included for calculating an employee's high-3 for retirement compensation. According to our analysis, Fair Labor Standards Act overtime pay accounts for about 11 percent of the example Shadow Wolves employee's pay as a tactical officer. If the employee reclassified and only served 1 year as a special agent before retiring, the employee's annual retirement compensation would increase by about \$1,000 (2.2 percent). By serving 2 years as a special agent before retirement, the employee's annual retirement compensation would increase by about \$2,100 (4.5 percent) over their tactical officer level.

<sup>c</sup>These retirement calculations are based on mandatory law enforcement retirement at age 57. These figures do not account for future cost-of-living adjustments that increase annuity benefits or possible payment of the Federal Employees Retirement System annuity supplement. See 5 U.S.C. § 8421. Mandatory retirement age for federal law enforcement personnel is set by statute. Generally, federal law enforcement personnel must retire at the age of 57. However, if the employee has not completed 20 years of certain specialized service when they reach age 57, they are subject to mandatory

<sup>9</sup>Specifically, after reclassifying to special agent the example employee would have a higher rate of basic pay at GS-13 and a higher retirement-creditable premium pay, resulting in a higher high-3 average salary used in their annuity computation. FLSA overtime is not included for calculating an employee's high-3 for retirement compensation. A federal employee's high-3 average salary is the highest average basic pay earned during any 3 consecutive years of service. The high-3 average and length of service are used to calculate a federal employee's basic annuity payment. See 5 U.S.C. §§ 8331(3), 8401(3)-(4). According to our analysis, FLSA overtime pay accounts for about 11 percent of the example Shadow Wolves employee's pay as a tactical officer, which is not included to calculate their high-3.

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retirement when they complete 20 years of certain specialized service. The head of a federal agency may exempt certain law enforcement officers from mandatory retirement until the age of 60. See 5 U.S.C. § 8425(b).

Specifically, the fictional Shadow Wolves employee's pay of about \$152,500 would decrease about \$7,000 (4.6 percent) by reclassifying to special agent. Some Shadow Wolves could temporarily be subject to a larger decrease in pay when they attend training to become special agents. Specifically, since three of the eight Shadow Wolves have not previously met the training requirements to be eligible for reclassification, they must attend about 22 weeks of training if they chose to reclassify. According to our analysis, by attending this training, the example Shadow Wolves employee would earn about \$134,000 in the 12-month period ending with the completion of special agent training, a decrease of about \$18,000 (12 percent) from their tactical officer pay. This is because the employee would no longer earn overtime from tactical officer duties and would not yet be eligible for special agent overtime.<sup>10</sup>

However, the employee's annual retirement-creditable compensation would increase by about \$3,600 (7.7 percent), provided the employee served at least 3 years as a special agent before retiring.<sup>11</sup> The employee's annual retirement compensation would increase by about \$1,000 (2.2 percent) by serving 1 year as a special agent, and about \$2,100 (4.5 percent) by serving 2 years. By reclassifying to special agent and serving 3 years in that position, the employee would receive about \$46,600 in additional retirement compensation by age 70 based on mandatory law enforcement retirement at age 57.<sup>12</sup> Figure 10 includes a summary of the decreased pay and increased retirement compensation that Shadow Wolves would receive by reclassifying to special agent.

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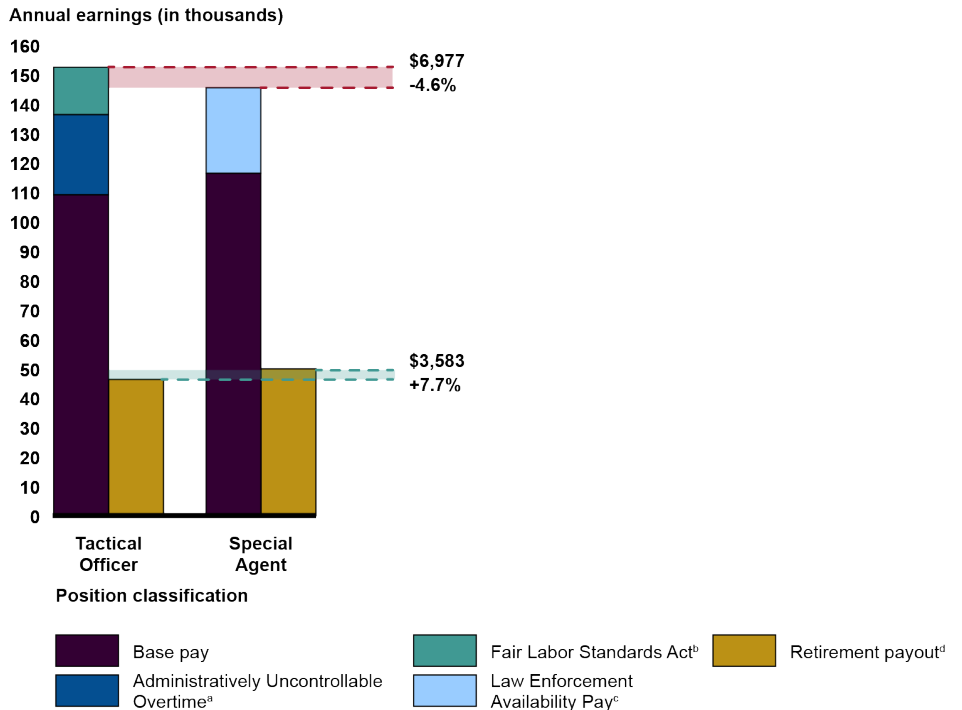
<sup>10</sup>According to ICE Office of Human Capital officials, since the Shadow Wolves Enhancement Act states that Shadow Wolves must complete certain training before they can reclassify to special agent, they would not qualify for LEAP pay while in training.

<sup>11</sup>After reclassifying to special agent, the employee would be at GS-13 step 6. After 2 years, the employee would earn a within-grade increase to step 7, which is reflected in the retirement calculation. Specifically, the employee's hourly base pay rate would increase from \$55.96 at GS-13 step 6 to \$57.56 at step 7, based on fiscal year 2023 rates.

<sup>12</sup>Mandatory retirement age for federal law enforcement personnel is set by statute. Generally, federal law enforcement personnel must retire at the age of 57. However, if the employee has not completed 20 years of certain specialized service when they reach age 57, they are subject to mandatory retirement when they complete 20 years of certain specialized service. See 5 U.S.C. § 8425(b).

**Appendix II: Analysis of Reclassification's Impact on Shadow Wolves Compensation**

**Figure 10: Impact of Reclassification on Fictional Shadow Wolves Employee's Pay and Retirement Compensation**



Source: GAO analysis of U.S. Immigration and Customs Enforcement (ICE) information. | GAO-24-106385

Note: Tactical officer pay calculations are based on a GS-12 employee at step 10 with an hourly basic pay rate of \$52.44, working 112 hours per pay period, with 32 hours of Administratively Uncontrollable Overtime (AUO), which includes 26.5 hours of Fair Labor Standards Act (FLSA) overtime. Special agent calculations are based on a GS-13 employee at step 6, working 112 hours per pay period, including 32 hours of Law Enforcement Availability Pay.

<sup>a</sup>AUO is paid to an employee in a position in which the hours of duty cannot be controlled administratively. If an employee qualifies for AUO pay, all irregular overtime hours are compensated by AUO pay. Hours are paid at different rates depending on the number of irregular overtime hours worked, from 10 to 25 percent of an employee's basic pay rate. See 5 C.F.R. §§ 550.151, 550.154. AUO is treated as basic pay for purposes of retirement benefits for law enforcement officers.

<sup>b</sup>FLSA overtime is paid at time and a half of the hourly regular rate of pay. See 5 C.F.R. §§ 550.111, 550.103, 551.501(c), 551.541. Since FLSA-nonexempt AUO recipients have received straight time pay for basic and AUO hours, there is a remaining FLSA obligation to pay half of the FLSA hourly regular rate for AUO hours in excess of 85.5 hours per biweekly (80 hour) pay period. See 29 U.S.C. § 207(k); 5 C.F.R § 551.512. FLSA overtime is not included for calculating an employee's "high-3" for retirement compensation.

<sup>c</sup>Law Enforcement Availability Pay is equal to 25 percent of a special agent's basic pay rate and compensates for all unscheduled duty that is typically required of positions classified as special agents. See 5 C.F.R. §§ 550.181, 550.185, 550.186(a), (c). Law Enforcement Availability Pay is treated as basic pay for purposes of retirement benefits.

<sup>d</sup>Retirement pay is calculated based on high-3 average salary, the highest average basic pay earned during any 3 consecutive years of service. See 5 U.S.C. §§ 8331(3), 8401(3)-(4). Calculations are based on both tactical officers and special agents receiving the pay shown here, as described, for at least 3 years. After reclassifying to special agent, the employee would be at GS-13 step 6. After 2

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years, the employee would earn a within-grade increase to step 7, which is reflected in the retirement calculation.

Finally, all eight Shadow Wolves will be subject to mandatory retirement sometime between fiscal years 2026 and 2030. If the fictional Shadow Wolves employee has 5 years of service time available before mandatory retirement, they would lose about \$22,400 in total pay over those 5 years by reclassifying to special agent.<sup>13</sup> However, by receiving about \$4,500 more in annual retirement compensation, they would make up that difference in about 5 years.<sup>14</sup>

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<sup>13</sup>This calculation does not include any possible pay losses Shadow Wolves who have not completed training requirements for reclassification would face during special agent training.

<sup>14</sup>After serving 5 years as a special agent, the employee's high-3 would be based on 3 years of pay at GS-13 step 7 after a within-grade increase after 2 years as a special agent.

# Appendix III: Comments from the Department of Homeland Security

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



**Homeland  
Security**

January 17, 2024

Rebecca Gambler  
Director, Homeland Security and Justice  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548-0001

Re: Management Response to Draft Report GAO-24-106385, "U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT: Improvements Needed to Workforce and Expansion Plans for Unit of Native American Law Enforcement Personnel"

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 of the U.S. Immigration and Customs Enforcement (ICE) Shadow Wolves program's use of technology as well as traditional indigenous tracking methods to interdict millions of pounds of illegal controlled substances smuggled into the Tohono O'odham Nation reservation and into the interior of the United States from Mexico. The Shadow Wolves, an elite Native American tactical unit within ICE's Homeland Security Investigations (HSI), have also used their skills to recover missing people, including children, and train others around the world in traditional tracking methods. DHS remains committed to enhancing the Shadow Wolves program to better preserve American national security and public safety along the Southwest Border.

The draft report contained six recommendations 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.

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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

 Digitally signed by JIM H  
CRUMPACKER  
Date: 2024.01.17 07:03:15 -05'00'

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

Enclosure

**Enclosure: Management Response to Recommendations  
Contained in GAO-24-106385**

GAO recommended that the Director of ICE:

**Recommendation 1:** Define the mission and goals of the Shadow Wolves program, with input from the Tohono O’odham Nation.

**Response:** Concur. ICE has existing defined mission and goals for the Shadow Wolves program, which falls within the scope of HSI’s mission to investigate, disrupt and dismantle terrorist, transnational and other criminal organizations (TCO) that threaten or seek to exploit the customs and immigration laws of the United States. The Shadow Wolves goal is to focus their investigative efforts on TCOs that leverage the Tohono O’odham Nation as an operational corridor. To this end, the Shadow Wolves cooperate and liaise daily with law enforcement partners from both the Tohono O’odham Police Department and the U.S. Bureau of Indian Affairs. ICE also has a Shadow Wolf National Program Manager at the HSI Office in Sells, Arizona that serves as the tribal liaison between HSI and the Tohono O’odham Nation.

The mission and goals of the Shadow Wolves are routinely evaluated to respond to the evolving criminal threat in the HSI Sells area of responsibility. As HSI looks to expand the Shadow Wolves program to other areas near the international border between the United States and Canada or the United States and Mexico, HSI will engage with local tribal leadership in each area and will gather and incorporate input for fine-tuning the Shadow Wolves’ mission on tribal lands, as appropriate. On November 30, 2023, ICE HSI met with GAO to further explain its intent in this regard and will provide GAO with additional documentation about the Shadow Wolves program mission and goals, which GAO opined should be sufficient to close this recommendation as implemented once received and reviewed. Estimated Completion Date (ECD): April 30, 2024.

**Recommendation 2:** After defining the mission and goals of the Shadow Wolves program, determine the staffing needs, to include the skills and number of positions necessary, for the Shadow Wolves program on the Tohono O’odham reservation.

**Response:** Concur. The HSI Office of Administrative Operations (OAO) is working with the ICE Office of Human Capital (OHC) to determine the staffing needs for the Shadow Wolves program and has taken steps to implement the provisions of the “Shadow Wolves Enhancement Act” (SWEA).<sup>1</sup> HSI OAO and OHC are preparing the administrative path forward for current Shadow Wolves who wish to convert to the [General Schedule] GS-1811 Special Agent job series. Additionally, HSI OAO and OHC

<sup>1</sup> Pub. Law No. 117-113, enacted April 19, 2022. <https://www.congress.gov/bill/117th-congress/house-bill/5681/text>

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are also preparing to recruit and hire new Shadow Wolves directly into the GS-1811 Special Agent job series. ICE anticipates that an entry-level GS-1811 Shadow Wolves hiring announcement will be posted no later than March 28, 2024. With the conversion of existing and the hiring of new Shadow Wolves, HSI will be able to appropriately staff the program. ECD: December 31, 2024.

**Recommendation 3:** Update the Shadow Wolves Enhancement Act strategy to include measurable goals, timelines, and milestones for recruiting Shadow Wolves.

**Response:** Concur. Following the October 2022 issuance of the SWEA strategy, which includes the program goals and milestones, ICE HSI has been focused on its implementation. ICE HSI's strategy to implement the SWEA is twofold: (1) converting existing Shadow Wolves to GS-1811 Special Agent job series; and (2) hiring new Shadow Wolves. Currently, ICE HSI is working with ICE OHC to prepare personalized packets that will contain information on changes to pay, retirement and benefits if existing Shadow Wolves personnel choose to convert to a Special Agent. This will be done on an individual basis so that each Shadow Wolf is able to decide what is best for them. HSI is working with ICE OHC to convert vacant Shadow Wolves positions (still in the Excepted Service) to GS-1811 positions, with the goal of getting those conversions completed, as well as posting an entry-level Shadow Wolves 1811 announcement no later than March 29, 2024. Once the strategy implementation is completed, HSI will evaluate whether updates to the SWEA strategy are necessary based on outcomes. ECD: January 31, 2025.

**Recommendation 4:** Provide each member of the Shadow Wolves with information required to make an informed decision about reclassifying to special agent. Such information includes individualized information about how reclassification would affect pay and retirement compensation, and the steps each member of the Shadow Wolves must complete for reclassification.

**Response:** Concur. ICE OHC has coordinated with HSI and developed a plan to provide the Shadow Wolves the information they will need to make a decision regarding their position classification. By March 29, 2024, the OHC Retirement and Benefits Unit (RBU) and the Payroll Unit will calculate estimated comparisons of each of the individual Shadow Wolves retirement and pay to demonstrate the impact of converting from an ICE Tactical Officer to the Criminal Investigator (GS-1811). Once these calculations have been done, ICE OHC will provide the information to each of the Shadow Wolves. The OHC Human Capital Policy Unit will schedule one-on-one meetings with each of the Shadow Wolves, along with a representative from HSI, RBU, and Payroll, to discuss the information that is provided and to answer any additional questions they may have regarding the steps for reclassification. ECD: July 31, 2024.



**Recommendation 5:** Develop a succession plan to address upcoming retirements from the Shadow Wolves program.

**Response:** Concur. ICE HSI is working with ICE OHC to hire additional Shadow Wolves to address the retirements in the Shadow Wolves program with the goal of posting an entry-level Shadow Wolves GS-1811 announcement no later than March 29, 2024. This will allow for experienced Shadow Wolves to train new recruits thereby ensuring succession planning within the program. ECD: January 31, 2025.

**Recommendation 6:** Develop criteria for evaluating and selecting Shadow Wolves expansion locations.

**Response:** Concur. Once ICE HSI completes the various human resource administrative actions needed to fully staff the existing Shadow Wolves unit in Sells, Arizona (e.g., providing existing Shadow Wolves an opportunity to convert, selecting and on-boarding new hires, etc.) it will be better positioned to develop a method and criteria for evaluating and selecting Shadow Wolves' expansion locations to other tribal lands. ECD: January 31, 2025.

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# Appendix IV: GAO Contact and Staff Acknowledgments

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## GAO Contact

Rebecca Gambler, (202) 512-8777, or [GamblerR@gao.gov](mailto:GamblerR@gao.gov)

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## Staff Acknowledgments

In addition to the contact named above, Ashley Davis (Assistant Director), Daniel Kuhn (Analyst-in-Charge), Justin Bolivar, Benjamin Crossley, Adam Darr, Samantha Lyew, Rebecca Sero, and Clarette Yen made key contributions to this report.

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