



Report to the Subcommittee on the
Middle East and North Africa,
Committee on Foreign Affairs,
House of Representatives

December 2018

STATE DEPARTMENT

Better Oversight and Controls Could Improve Timely Delivery of Legal Documents for Terrorism Victims

GAO Highlights

Highlights of [GAO-19-139](#), a report to the Subcommittee on the Middle East and North Africa, Committee on Foreign Affairs, House of Representatives

Why GAO Did This Study

While foreign states generally cannot be sued in a U.S. court, under FSIA, parties can sue governments for certain crimes such as injury or death from an act of terrorism, if certain factors are present. State is required by statute to serve notice of such suits or default judgments when other means for effecting service are not available, and charges plaintiffs a fee of \$2,275 to complete this task. Plaintiffs in such cases may also qualify for compensation from a fund that Congress established called the U.S. Victims of State Sponsored Terrorism Fund.

In this report, GAO examines (1) how State completes this service and the length of time it takes to complete requests, and (2) whether State has implemented key controls for executing service requests promptly. GAO reviewed State regulations, guidance, case files, and data from 2007 through 2017; and interviewed State officials in Washington, D.C., the Czech Republic, Germany, and Switzerland, which handle the vast majority of cases. GAO assessed State's controls against federal internal control standards.

What GAO Recommends

GAO is making five recommendations to State, including that it update its record-keeping guidance to ensure its records are accurate and complete, monitor the progress of requests, periodically analyze data to identify causes of slow service and take corrective actions, and establish timeframes for completing service. State concurred with all five of GAO's recommendations and identified actions it plans to take to address them.

View [GAO-19-139](#). For more information, contact Jason Bair at (202) 512-6881 or BairJ@gao.gov.

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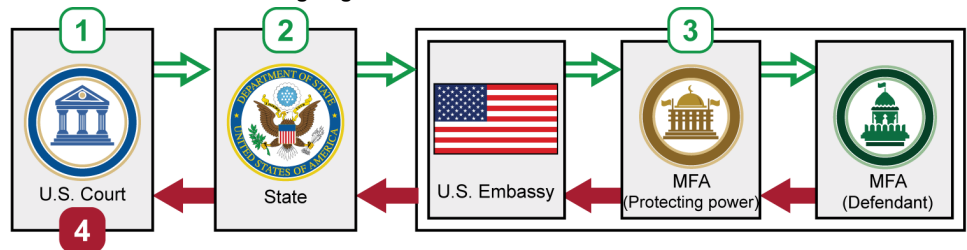
STATE DEPARTMENT

Better Oversight and Controls Could Improve Timely Delivery of Legal Documents for Terrorism Victims

What GAO Found

The Department of State (State) notifies sovereign defendants of court proceedings under the Foreign Sovereign Immunities Act (FSIA) in a four stage process that has taken on average about 5 months to complete. State headquarters has overall responsibility for delivering legal documents but U.S. embassies and foreign governments play key roles as well. From 2007 through 2017, State completed 229 requests for delivery of legal documents in an average of about 5 months, but about 28 percent of the requests took longer than 6 months and 7 requests took more than a year. Slow delivery could adversely affect a plaintiff's ability to obtain compensation from a special victims' fund that Congress set up in 2015.

State's Process for Delivering Legal Documents



Four stages of State's process for completing service:

- 1 Plaintiffs submit a request addressed to State through a U.S. court;
- 2 State headquarters processes the request and sends it to the relevant U.S. embassy;
- 3 The embassy processes the request and either serves the documents directly to the foreign government or, in the case of countries such as Iran and Syria, serves them through the Ministries of Foreign Affairs (MFA) of friendly governments, known as protecting powers; and,
- 4 State headquarters notifies the U.S. court that the documents were delivered.

Legend: State = Department of State; MFA = Ministry of Foreign Affairs.

Source: GAO analysis of information provided by the Department of State and the U.S. District Court for the District of Columbia. | GAO-19-139

State's guidance and federal internal control standards require controls such as accurate and complete record-keeping, continuous monitoring, and analysis of data; however, GAO found that State lacks several key controls to manage its delivery of legal documents. First, State's records are incomplete. For example, for 82 percent of the cases, State had no information about when it received court requests. Second, State did not monitor the progress of cases, resulting in slow service. This slow service led State to waive fees of about \$57,000 because checks had expired. Third, State did not analyze case data to identify factors contributing to slow service, or establish timeframes for completing service. As a result, managers lack a sound basis for making decisions on how to improve timeliness. In June 2018, State took some actions based on GAO's review to improve its performance, including preparing step-by-step guidance and developing a new record-keeping system, but further actions could fill the gaps that have impaired program performance.

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Abbreviations

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| CA | Bureau of Consular Affairs |
| FAH | Foreign Affairs Handbook |
| FAM | Foreign Affairs Manual |
| FSIA | Foreign Sovereign Immunities Act |
| Fund | U.S. Victims of State Sponsored Terrorism Fund |
| MFA | Ministry of Foreign Affairs |
| OCS/L | Directorate of Overseas Citizens Services/Office of Legal Affairs |
| State | Department of State |

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December 12, 2018

The Honorable Ileana Ros-Lehtinen
Chairman
The Honorable Ted Deutch
Ranking Member
Subcommittee on the Middle East and North Africa
Committee on Foreign Affairs
House of Representatives

Victims and their families can sue a state sponsor of terrorism in a U.S. court, but may need to rely on the Department of State (State) to deliver legal documents. While foreign states generally cannot be sued in a U.S. court, the Foreign Sovereign Immunities Act (FSIA) does allow private parties to sue a foreign government in a U.S. court for specified reasons, including for personal injury or death caused by an act of torture, extrajudicial killing, aircraft sabotage, or hostage taking if the defendant government caused or provided material support for that act and is designated as a state sponsor of terrorism.¹ Service of process (service)² is the procedure by which the defendant is given proper notice of the initiation of court proceedings. Under FSIA, when plaintiffs bring legal action against foreign governments and are otherwise unable to achieve service using the three other methods set forth in the Act,³ they may request that the State provide service through diplomatic channels to the foreign state. In these instances, State is responsible for completing service on the foreign government on behalf of U.S. courts at the request of the plaintiffs by transmitting the necessary documents, and for sending

¹Pub. L. No. 94-582, as amended.

²Throughout this report we use the term “service” to refer to both the provision of documents necessary to initiate legal action against a foreign state, as well as the provision of a copy of a default judgment against a foreign state, in the manner prescribed for under FSIA.

³These methods are delivery of a copy of the summons and complaint in accordance with a special arrangement between the plaintiff and the foreign state, delivery of these documents in accordance with the provisions of an applicable international convention on service of judicial documents, and delivery of these documents by any form of mail requiring signed receipt, to be dispatched by the clerk of court to the head of the ministry of foreign affairs of the foreign state. These three methods must be attempted in sequence prior to a request for service through the diplomatic channel. See 28 U.S.C. § 1608(a).

the clerk of court a certified copy of the diplomatic note⁴ indicating when the documents were transmitted.⁵ Plaintiffs filing lawsuits under the FSIA, including lawsuits on behalf of victims and their families against state sponsors of terrorism, have won judgments against a number of foreign governments, including Iran, Syria, and Sudan. Those who have won judgments can also apply for compensation from a special fund that Congress set up in 2015.⁶ Plaintiffs awarded compensation from this fund have included Iran hostages held from 1979 to 1981 and their spouses and children, and victims of the bombings of U.S. Embassies in Kenya and Tanzania.⁷

You asked us to review how State conducts service of process.⁸ In this report, we examine (1) how State completes service and how long it takes to perform this function; and (2) whether State has implemented key controls in record-keeping, monitoring, analysis, and performance management for completing service requests. To describe how State completes service, we reviewed State and embassy documentation such as regulations, official guidance, and case files. In Washington, D.C., we also interviewed officials of State's Bureau of Consular Affairs (CA); Bureau of Near Eastern Affairs, and Bureau of Administration. Specifically, we interviewed officials in Consular Affairs' Directorate of Overseas Citizens Services/Office of Legal Affairs (OCS/L) and Administration's Diplomatic Pouch and Mail Office. We met with consular officials from the U.S. Embassies in Berlin, Germany; Bern, Switzerland;

⁴Diplomatic notes are used for correspondence between the U.S. Government and foreign governments in Washington, DC, and at U.S. embassies abroad, and foreign offices or ministries.

⁵See 28 U.S.C. § 1608(a)(4). FSIA also requires that a copy of any default judgment obtained against a foreign state be sent to that state in the same manner as FSIA provides for service of process. See 28 U.S.C. § 1608(e). Throughout this report, we use the term "service" to encompass both actions.

⁶The Justice for United States Victims of State Sponsored Terrorism Act, Pub. L. No. 114-113, Div. O, § 404 codified at 34 U.S.C. § 20144, established the United States Victims of State Sponsored Terrorism Fund to provide compensation to certain U.S. persons who were injured in acts of international state-sponsored terrorism.

⁷See <https://www.justice.gov/opa/pr/department-justice-compensates-victims-state-sponsored-terrorism>.

⁸"Process" in the context of legal actions commenced under the Federal Rules of Civil Procedure refers to the summons and complaint, but service may be of other documents such as a default judgment which is not "process." Throughout the report, we use "service" to encompass all of the requests for assistance under 28 U.S.C. §1608(a)(4) and 28 U.S.C §1608(e).

and Prague, Czech Republic. We also met with court officials from three of the principal courts that have requested service from State. Using these sources, we developed a process map that we provided to State officials for their review and comment. State officials did not indicate any concerns about the process map.

To document the length of time it took for State to complete service from 2007 through 2017, we reviewed State's spreadsheet, or case tracker, for tracking service requests (cases), which documents various milestones in the completion of service requests made during this time period—for example, when State received the request and when it notified the court that service had been completed. Because the data in its spreadsheet were incomplete, we improved the spreadsheet by supplementing it with data from other sources such as court records. After making the appropriate modifications to the data in the spreadsheet, we determined that the data were sufficiently reliable for our purposes. We analyzed the data in the improved spreadsheet to determine the length of time it took for State to complete service for the period 2007 through 2017—the most recent full-year data available at the time of our review—as well as for key stages of the process.

To determine whether State implemented key controls in record-keeping, monitoring, analysis and performance management for completing service requests, we reviewed the FSIA and applicable guidelines, including State and federal guidelines and met with State officials in Washington, D.C. to discuss how they manage the completion of service, as well as with consular officials from the U.S. Embassies in Berlin, Bern, and Prague. These embassies were responsible for completing about 70 percent of all service requests. We also reviewed two State case trackers to determine to what extent they were complete and accurate, and were consistent with State record-keeping guidance. Similarly, we reviewed the 59 case files for service requests received in 2015 and 2016 to determine to what extent the documentation contained in these files was consistent with State guidance in the Foreign Affairs Manual (FAM) and the Foreign Affairs Handbook (FAH).⁹

⁹See 5 FAM 455 and 5 FAH-4 H-215.3-1. The FAM and FAH are authoritative sources for State's organizational structures, policies, and procedures that govern the operation of State, the Foreign Service, and when applicable, other agencies. The FAM differs from the FAH in that generally the FAM sets forth policy, while the FAH communicates the procedures to follow.

We used the improved spreadsheet we developed, and worked with State officials and the responsible plaintiffs' attorneys, to identify 16 cases that took more than, less than, or about the average amount of time to process to identify the factors that affect the length of time it takes to complete service requests. We also identified the principal courts that have requested service through State. We discussed with court officials and private attorneys and a firm familiar with service requirements under the FSIA their experience obtaining service through State. We also met with officials of the U.S. Victims of State Sponsored Terrorism Fund, which was established by Congress to provide compensation to a specific group of victims harmed by state-sponsored terrorism. We assessed State's implementation of its key controls against relevant State Department guidance and relevant federal standards for internal controls.¹⁰ Appendix I contains a full description of our scope and methodology.

We conducted this performance audit from September 2017 to December 2018 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 the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

In Federal courts, civil actions, such as lawsuits, begin with the filing of a complaint with the court. On or after filing a complaint, a plaintiff obtains a summons to the defendant from the court. The summons, among other things, names the court and the parties, states the time within which the defendant must appear before the court to defend against the complaint, and notifies the defendant that a failure to appear and defend will result in a default judgment against the defendant for the relief demanded in the complaint. Plaintiffs are responsible for providing defendants both the summons and a copy of the complaint. This procedure, known as service of process, gives parties formal notice of the initiation of court proceedings. In the event of a default judgment against a foreign state in which the defendant has not responded to a summons or complaint and

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

the court has ruled in favor of the plaintiff, FSIA requires that service of a copy of the judgment be completed.

The FSIA prescribes a sequential process for completing service on foreign governments that plaintiffs must follow before requesting that State complete service through the diplomatic channel. Federal regulations require State to complete service “promptly” although neither the regulations nor State guidance further define the term.¹¹ Pursuant to these regulations, where there are no diplomatic or consular relations between the United States and the defendant foreign government or where the United States has suspended diplomatic or consular operations, service may be accomplished pursuant to the arrangement the United States has with a friendly government known as a protecting power arrangement.¹² The protecting power arrangement specifies the consular services that the friendly government will provide in assisting the United States. As of November 2018, the United States had protecting power arrangements with the governments of the Czech Republic, France, Sweden, and Switzerland. Each of the arrangements with the Czech Republic and Switzerland contains a provision for service respectively on Syria and Iran.¹³

Based on our analysis of State and U.S. court data,¹⁴ from 2007 through 2017, State received 289 service requests to 33 countries. Iran alone accounted for over 60 percent of all service requests, followed by Syria with about 7 percent, and Sudan with about 5 percent. Because Switzerland and the Czech Republic serve as protecting powers for the

¹¹See 22 CFR 93.1.

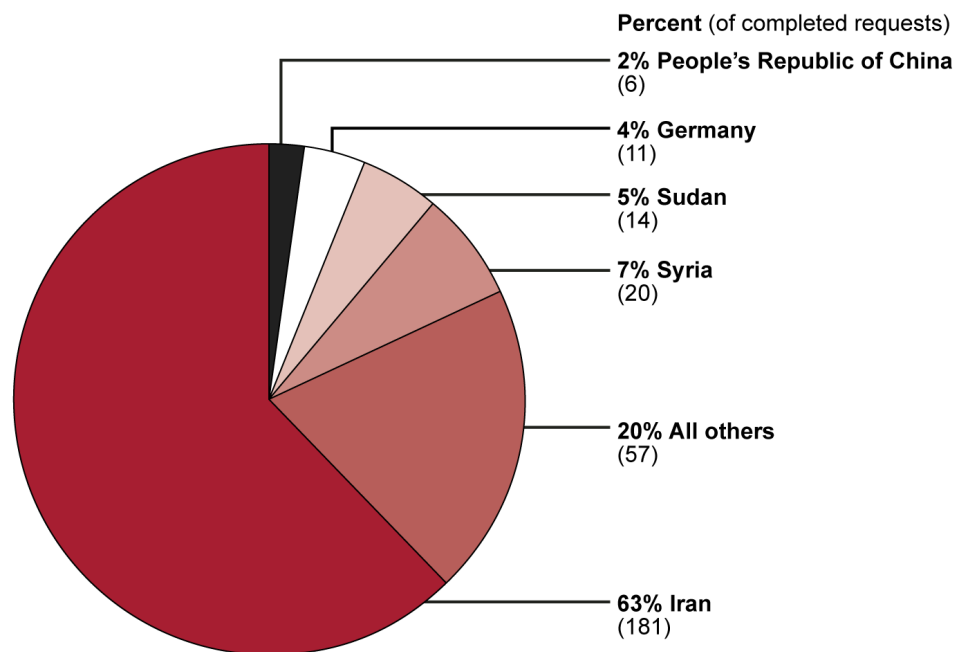
¹²The United States does not have diplomatic relations with the governments of Iran and North Korea. While the United States maintains diplomatic relations with the government of Syria, U.S. embassy operations are currently suspended in Damascus. The United States maintains diplomatic relations with the government of the Central African Republic and has an embassy there, but provides limited consular services.

¹³The protecting power arrangement with the Czech Republic in Syria dates from August 2012 to the present; that of France in the Central African Republic dates from April 2013 to the present; that of Sweden in North Korea dates from September 1995 to the present; and that of Switzerland in Iran dates from May 1980 to the present. The Swiss embassy in Tehran performs consular functions for U.S. citizens through a Foreign Interests Section, as does the Czech embassy in Damascus. The protecting power arrangements with France and Sweden do not contain provisions for service according to State.

¹⁴Because OCS/L’s request tracking spreadsheet did not include all service data, GAO had to supplement the data in OCS/L’s request tracking spreadsheet with data derived from U.S. court records contained in the LexisNexis database, “Courtlink.”

United States in Iran and Syria, respectively, about two-thirds of all service requests were accounted for by the U.S. Embassies in Bern and Prague. Figure 1 shows the breakdown of FSIA service requests by defendant country from 2007 through 2017. Over the last 2 years, 2016 and 2017, State completed 31 and 48 cases respectively. The 48 cases represent the highest number of cases in any year for the 11-year period we reviewed (see App. II for further data on State’s provision of service since 2007.)

Figure 1: Completed Service Requests by Defendant Country, 2007-2017



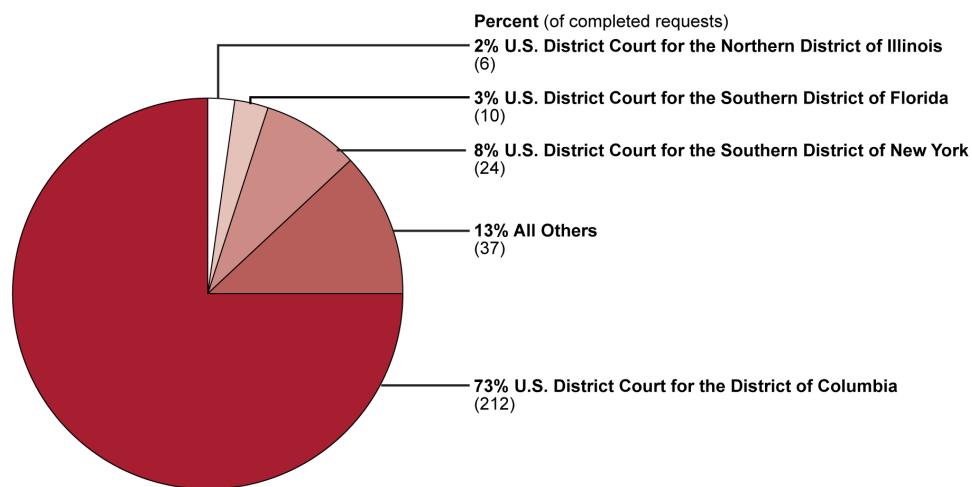
Source: GAO analysis of State Department and U.S. court data. | GAO-19-139

Note: Percentages do not sum to 100 percent due to rounding. Based on records for 289 service requests.

Service requests to State were made through at least 31 federal, state, and county courts. The vast majority of service requests were made through federal district courts. One court—the U.S. District Court for the District of Columbia—was the venue for 73 percent of all completed service requests, followed by 8 percent for the U.S. District Court for the Southern District of New York and 3 percent for the U.S. District Court for the Southern District of Florida. According to some plaintiffs’ attorneys with whom we spoke, the U.S. District Court for the District of Columbia has jurisdiction over most cases involving victims of state-sponsored terrorism. Figure 2 provides information on the service requests

completed from 2007 through 2017 based on the court used to make the request.

Figure 2: Completed Service Requests by Requesting Court, 2007-2017



Source: GAO analysis of State Department and U.S. court data. | GAO-19-139

Note: Percentages do not sum to 100 percent due to rounding. Based on records for 289 service requests.

According to plaintiffs' attorneys, victims of state-sponsored terrorism who have obtained judgments against a foreign state generally seek compensation in two ways: (1) by attaching and directly seizing assets of that state pursuant to the FSIA and other applicable provisions of law¹⁵ and (2) from a temporary special fund called the U.S. Victims of State Sponsored Terrorism Fund (Fund). The Fund was established by Congress in 2015 with about \$1 billion in appropriations. Congress established the Fund for a period of 10 years ending in 2026 and mandated that certain forfeiture proceeds, penalties, and fines be deposited into the Fund if paid to the United States after the Fund's establishment.¹⁶ The Fund can provide compensation to those, who (1) have secured final judgments in a U.S. district court against a state sponsor of terrorism for a claim arising from an act of international

¹⁵According to plaintiffs' attorneys and documents, identified assets have included aircraft, bank accounts, and buildings in the United States.

¹⁶Pub. Law 114-113, Div. O, section 404, codified at 34 U.S.C. § 20144. The Fund web site can be found at <http://www.usvsst.com/index.php>.

terrorism for which the state was not found immune from the FSIA,¹⁷ (2) were held hostage at the U.S. Embassy in Tehran, Iran from November 1979 to January 1981,¹⁸ or (3) are the personal representatives of the estate of a deceased individual in one of these two categories. Victims must file appropriate documentation with the Fund, and be found to qualify. Compensation for victims is calculated on a pro-rata basis on the amount of available funds for each distribution, and is subject to certain statutory caps. The first payments from the Fund were authorized in December 2016; the second distribution is scheduled for authorization in January 2019.¹⁹ After 2019, eligible claims will be paid annually out of available funds, until all eligible amounts have been paid in full or the Fund terminates in 2026.

¹⁷State sponsors of terrorism have included Cuba, Iran, Iraq, Libya, North Korea, South Yemen, Sudan and Syria. As of September 2018, Iran, North Korea, Sudan, and Syria were still listed as state sponsors of terrorism; the other countries had been removed from the list.

¹⁸To be eligible, individuals who were held hostage have to demonstrate, among other things, that he or she is a member of a proposed class in a case specified by the Fund's statute. The Fund can also compensate spouses and children of members of that proposed class. See 34 USC 20144(c)(2).

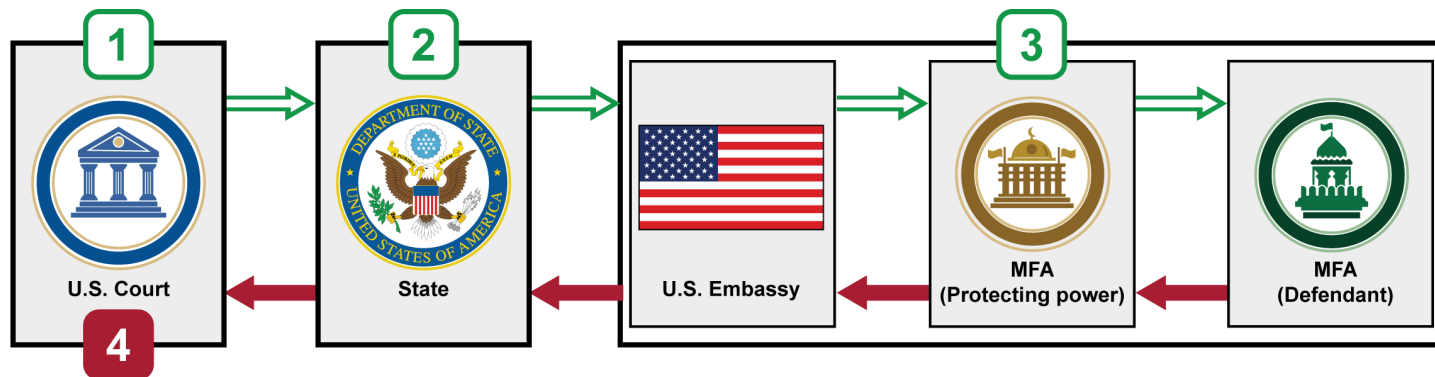
¹⁹According to information provided by the Fund, over \$1 billion was awarded to qualifying victims that participated in the first distribution and over \$1 billion has been allocated for second round payments. See United States Victims of State Sponsored Terrorism Fund, *Supplemental Report from the Special Master*, (Washington, D.C.: August 2017), (<http://www.usvsst.com/docs/USVSST%20Fund%20Supplemental%20Congressional%20Report%208-2-2017.pdf>).

State Completes Service in Several Stages That Take 5 Months to Complete On Average

State's Process for Completing Service Has Four Stages

State completes service through four stages involving the courts, the Department of State, U.S. embassies, and foreign ministries through a process that took about 5 months to complete on average for the period 2007 through 2017. State's OCS/L within the Bureau of Consular Affairs administers the diplomatic service provisions of the FSIA. Figure 3 summarizes how State completes service in countries where a protecting power assists in the completion of service under the FSIA.

Figure 3: Completion of Service with the Assistance of a Protecting Power



Legend: State = Department of State; MFA = Ministry of Foreign Affairs.

Source: GAO analysis of information provided by the Department of State and the U.S. District Court for the District of Columbia. | GAO-19-139

The steps involved are numerous and require action by litigants, courts, and the State Department, but can be summarized in four stages:²⁰

²⁰The description of the process is based on several interviews with State officials in Washington D.C. and at U.S. embassies abroad, as well as interviews with officials from U.S. courts. A full description of our methodology can be found in appendix I.

-
1. **Preparing and submitting a request for service to State.** Plaintiffs' attorneys compile and submit the required documentation to the relevant clerk of court, who transmits the package to State.²¹ This documentation must include two copies of the complaint, summons and a notice of suit, together with a translation of each into the official language of the foreign state, or where a plaintiff has obtained a default judgment against a foreign state, translated copies of that default judgment and a notice of default judgment, as well as a cashier's check made out to the appropriate U.S. embassy for the applicable fee.²²
 2. **Receiving and processing the request at State.** OCS/L receives the package from the clerk of the court where the suit was filed, verifies that the package is complete and the check is written for the proper fee amount, works with plaintiff's attorney or the clerk of court to resolve any errors or issues with the package, prepares language for the diplomatic note and instructions for the embassy staff, and circulates the diplomatic note and instructions for clearances from relevant Department of State offices. OCS/L sends, via diplomatic pouch, this package to the appropriate embassy depending on the defendant. In cases involving the assistance of a protecting power for the United States to serve documents under the FSIA, OCS/L sends the package via diplomatic pouch to the U.S. embassy in the country that serves as the protecting power for U.S. interests in the defendant country. In the case of suits against the government of Syria, for example, the protecting power is the Czech Republic. In cases involving countries where the United States has diplomatic relations and an embassy the package goes to the U.S. embassy in the defendant country.
 3. **Receiving and processing a request at U.S. embassies and working with protecting powers.** At the U.S. embassy, an American consular officer prepares a diplomatic note in accordance with OCS/L guidance that is added to the package and sends the package to the Ministry of Foreign Affairs. In cases involving the assistance of a

²¹Throughout this report we use the word "package" to refer to the set of documents that is, at various steps, assembled, supplemented, and transmitted until service has been completed.

²²Since July 13, 2010, State charges, as set forth in 22 CFR 22.1, a \$2,275 fee. According to State's checklist for plaintiffs' attorneys a cashier's check or money order should be made out to the U.S. embassy or consulate involved. For example, for requests for service upon Iran or its political subdivisions, the check or money order should be made out to "U.S. Embassy Bern."

protecting power for the United States to serve documents under the FSIA, the Ministry of Foreign Affairs prepares instructions for the consular officer at the foreign interest section of the embassy in the defendant country and sends him the package. A consular officer in the U.S. interest section of the protecting power's embassy in the defendant country prepares a diplomatic note to add to the package and delivers the package, or arranges for its delivery, to the Ministry of Foreign Affairs of the defendant country.

4. **Notifying the court that service has been completed.** Once service has been completed, the package is sent back to OCS/L for delivery to the clerk of court. In the instance of protecting power assistance, the package will include certifications from the foreign interest section of the protecting power that process was served on a specific date as well as other certifications by the protecting power's Ministry of Foreign Affairs and the U.S. embassy.

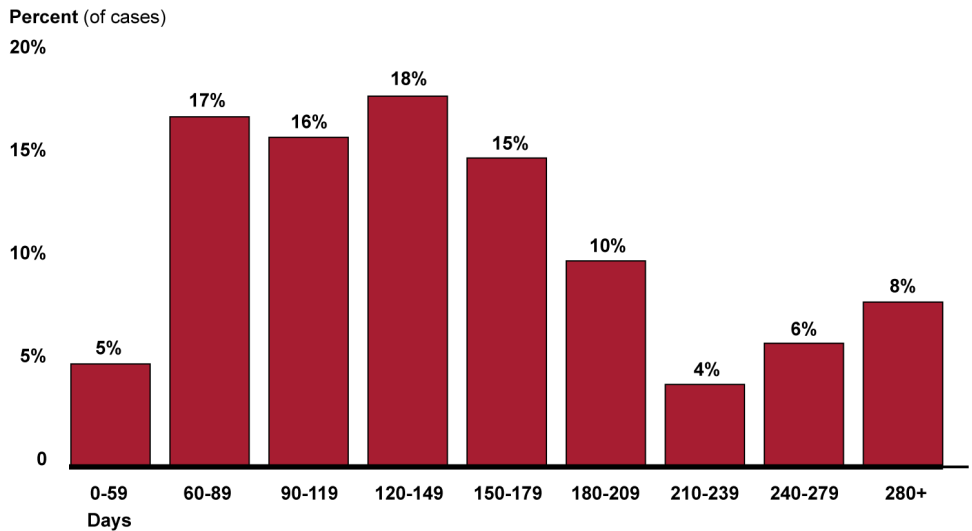
From 2007 through 2017, State Completed Requests In About 5 Months On Average

Our analysis of State and court data²³ shows that for the 229 service requests that we analyzed, the average (mean) time for State to complete the requests over the past 11 years was about 158 days—or about 5 months.²⁴ About 50 percent of the service requests took State between 90 and 179 days to complete, and about 28 percent took 180 days or more. Seven requests took longer than 1 year. The longest request took 695 days to complete. Figure 4 shows the completion times of service requests measured in the number of days taken for 2007 to 2017, by 30-day intervals.

²³Because State's service request (case) tracking spreadsheet did not include all service data, GAO had to supplement the data in OCS/L's case tracking spreadsheet with data from other sources, for example, court records. By searching court records, we were able to find much of the data that was missing from State's records and create a reliable data set that contained valid start and end dates for about 80 percent of the requests (229 out of the 289).

²⁴The median elapsed time in completing service requests was 140 days—or about 5 months. The median time was lower than the mean time because of lengthy cases that increased the average. The arithmetic mean (average) is the sum of the number of days that State took to complete all cases divided by the number of cases. The median is the middle value of the completion times when all the cases are ordered from longest to shortest.

Figure 4: Number of Days for State Department to Complete Service Requests, 2007-2017



Source: GAO analysis of State Department and U.S. court data. | GAO-19-139

Note: Percentages do not sum to 100 percent due to rounding. Analysis is based on 229 cases for which there was sufficient data.

Our analysis shows the most time-consuming stage to complete service was the period in Washington, D.C. in which State Headquarters completes document review and clearance, as shown in table 1.

Table 1: Average Number of Days for State Department to Complete Stages of Service Requests from 2007-2017

| Stages | Average Number of Days to Complete | Number of cases available for calculation | Location of Activity |
|---|------------------------------------|---|--------------------------|
| Stage 2 - Document Review and Clearance | 76 | 216 | Washington D.C. |
| Stage 3 - Delivery of Documents | 33 | 268 | Overseas |
| Stage 4 - Return of Documents | 45 | 284 | Overseas/Washington D.C. |

Source – GAO analysis of State Department and U.S. court records. | GAO-19-139

Note: The number of cases that had the dates needed to calculate the days for completion varied by stage because of missing records in State’s data. The sum of the averages for these 3 stages does not sum to the overall average because there were different numbers of cases available for each calculation by stage and overall.

Slow Service Could Adversely Affect Victims' Ability to Obtain Compensation

Although neither the FSIA, State's implementing regulations, nor federal rules of civil procedure establish a time limit for State to complete service, the length of time State takes to complete service can affect plaintiffs' compensation. According to plaintiffs' attorneys we interviewed, State's taking a long time to complete service could adversely affect victims' ability to gain compensation for two reasons. First, slow service can lengthen the time it takes to obtain a final judgment against a foreign government, thereby delaying plaintiffs' ability to meet the requirements necessary to satisfy judgments through asset seizures or to apply for compensation from the U.S. Victims of State Sponsored Terrorism Fund. For efforts to collect judgments through asset seizures, plaintiffs' attorneys explained that the first plaintiff to successfully make such a claim is awarded the entire asset. Thus they are competing to be first in making such claims. Second, slow service can also reduce the total award that claimants receive from the Victims Fund.²⁵ For example, slow service could result in plaintiffs being unable to provide the required documentation before the deadline of a particular round of distributions for the Fund. The deadline for the 2019 distribution was September 14, 2018.

The Fund's procedures allow victims to apply for compensation after a court has issued a default judgment that includes compensation against the defendant government in their case and following their transmittal of a request for service of the default judgment through State. Of the 10 firms that submitted requests for service to State that we interviewed, 6 expressed concern that slow service could adversely affect their clients' compensation from the Fund for one of the reasons described. Three of the firms also cited ongoing cases where compensation could be adversely affected if they are unable to obtain a default judgment and apply for service through State by the deadline established by the Fund for the next round of distribution. According to Fund officials the Fund has allocated approximately \$1.095 billion for second-round payments. The Special Master will authorize second-round payments on a pro rata basis to claimants with eligible claims by January 1, 2019.

²⁵Pursuant to its authorizing statute, the Fund takes into account compensation received from sources outside of the Fund when making an award. See 34 USC § 20144(d)(3), 34 USC § 20144(e)(2)(B)(iii). In addition, there are statutory limits on compensation that the Fund can award to victims.

State Has Not Implemented Key Controls to Manage the Completion of Service

OCS/L Did Not Maintain Complete and Accurate Records

OCS/L did not maintain complete and accurate records of the status of service requests completed during calendar years 2007 through 2017. State's record-keeping guidance stresses the importance of creating and preserving records so that documentation of an office's activities is complete and accurate.²⁶

To document and manage State's completion of service, OCS/L officials rely primarily on two forms of documentation. The first type of documentation or record is a "case tracker" spreadsheet that OCS/L uses to document the status of service requests (cases). The second type of record OCS/L relies on is case files which include various documents related to the completion of service.

We analyzed the case tracker that OCS/L provided to us in November 2017.²⁷ We determined that it did not contain complete and accurate data about the service requests from 2006 through 2016 because it did not contain any fields documenting the start of the process at State—for example, the date when the court sent the request to OCS/L or the date when OCS/L received the request. Without this, OCS/L lacked any data about when it first received and began working on a request. In addition, OCS/L lacked data about the status of any service request during the initial document review and clearance stage of the process, which as previously discussed, is the most time consuming stage. In response to

²⁶Specifically, State's FAM requires State officials to record transactions in an accurate, timely, and appropriate manner. See 5 FAM 400 entitled, "Records Management." In addition, State's FAH notes the importance of appropriately recording transactions to achieve an entity's objectives, which in this case, is to manage the completion of service. See 5 FAH-4 H-215.3-1 entitled, "Department Offices."

²⁷Specifically, we verified whether the case tracker's columns captured the critical data of when (1) the request letter was dated, (2) the court sent its request to OCS/L, (3) OCS/L received the request, (4) OCS/L sent the request to the post, (5) service was completed, and (6) OCS/L notified the court service had been accomplished.

our request for additional data to use in analyzing the timeliness of State's service completions, in December 2017, OCS/L provided us with an updated tracker containing three fields not in the previous tracker. The three fields were designed to capture the start of the process, but were often blank. For example, 82 percent of the cases did not contain the date when OCS/L received the request from the court. By contrast, our analysis of both the November 2017 and December 2017 case trackers showed that OCS/L almost always recorded the "end dates" in the process when service was completed and when OCS/L notified the court that service had been completed.

We also reviewed the 59 case files OCS/L provided for the 2015 and 2016 service completions and determined that OCS/L did not consistently keep copies of several critical documents.²⁸ We chose these years because OCS/L officials said that providing case files for the entire period under review would present a significant logistical challenge and the case files for the prior years were less complete. As table 2 summarizes, all but three files contained a copy of the memorandum providing instructions to the embassy and language for the diplomatic notes. Nine case files were missing a copy of the diplomatic note. There were also 16 case files missing the certification that service was completed on a specific date. These two documents are critical to demonstrating that service has been completed. There were also 47 case files lacking a signed copy of the notification to the court. None of the 59 case files we reviewed included a copy of an email required by State guidance providing key information on the completion of service. The Foreign Affairs Manual requires embassies to send OCS/L an email documenting when documents required for service were received by the embassy, when those documents were transmitted to a foreign ministry, and the date an executed request was sent to OCS/L for relay to a court (including invoice, registry, and pouch numbers by which the documents were returned to State headquarters), but none of the files we reviewed contained this documentation.²⁹ Table 2 summarizes the results of our review of the case files.

²⁸Appendix I describes in detail the methodology we followed to analyze OCS/L's case tracker spreadsheet and case files. Based on our analysis of the cases in the improved spreadsheet for those years (32 cases in 2015 and 27 cases in 2016), we received the number of case files from OCS/L that we expected. Our results cannot be generalized to prior years, but provide generally complete information for 2015 and 2016.

²⁹See 7 FAM 955 entitled, "Service Pursuant to the Foreign Sovereign Immunities Act."

Table 2: Completeness of State’s 2015 and 2016 Service Request Case Files

| Document | Number of files that included document | Number of files that did not include document |
|--|---|--|
| Instruction memo to embassies | 56 | 3 |
| Diplomatic note | 50 | 9 |
| Certification that service completed | 43 | 16 |
| Signed notification to court | 12 | 47 |
| Email documenting when service was completed | 0 | 59 |

Source: GAO analysis of 59 State Department case files. | GAO-19-139

In discussing why their case tracker and case files are incomplete and sometimes inaccurate, OCS/L officials noted that State’s agency-wide record-keeping guidance does not prescribe what kind of records they must keep for service requests. Federal internal control standards state that management should implement control activities through policies such as through day-to-day procedures or guidance. Additionally, these standards state that management should design controls to achieve objectives and respond to risks. These controls could, for example, document significant events in a manner that allows the documentation to be readily available for examination or require edit checks during information processing.³⁰ Further these control activities should ensure that documentation and records are properly managed and maintained. In September 2018, after reviewing our analysis, State officials said that as a matter of practice they had begun digitally scanning service documents, but still did not have a standard list of documents to be maintained in case files. They also acknowledged that the level of completeness of the “case tracker” and case files varied depending on the individual maintaining the files.

Additionally, in June 2018 State launched a new case tracker using a database management application. According to OCS/L officials, the new tracker will facilitate the recording and updating of key milestone information. The new tracker allows for including some information not documented in the previous case tracker spreadsheet.³¹ However, it does

³⁰[GAO-14-704G](#)

³¹For example, the database contains fields to document, among other things, the date when checks expire, and whether the request package received is complete. It also has a field to capture detailed information about the status of service requests currently being completed at the embassy level.

not capture the date the court sent the request to OCS/L. According to OCS/L officials and our analysis, the time between when the court sent the request to OCS/L and OCS/L receives the request can vary significantly. In nine instances, it took from about 3 weeks to over a year for the service request to travel from the court to OCS/L. OCS/L officials explained the new tracker does not capture the date when the court sent the package because they believe the key information they need to use in analyzing and managing the program begins at the point where OCS/L receives the package and not before. However, without capturing this data, OCS/L will not be able to determine the extent to which service requests are delayed in CA's mailroom before being delivered to OCS/L—one of the four key stages of the process for completing service. Further, without guidance that specifies the information OCS/L must maintain in the case tracker and case files, State officials will continue to lack complete and accurate information.

OCS/L Does Not Monitor Progress in Completing Service Requests

OCS/L does not continuously monitor service requests to determine their progress in moving through the four stages. State's guidance stresses the importance of continuous monitoring to achieve office, bureau, and agency-wide goals and objectives. Among other things, the Foreign Affairs Manual states that monitoring data can help determine if implementation is on time or if any timely corrections or adjustments may be needed to improve efficiency or effectiveness.³² Additionally, federal standards for internal control state that management should establish monitoring activities, evaluate the results, and remediate any deficiencies.³³ OCS/L officials indicated that they have not continuously monitored service requests because they are not required to do so. OCS/L has no specific guidance requiring monitoring of the status of service requests during any stage of the service completion process and, as of October 2018, State had not established performance standards or timeframes for completing service of process and associated tasks, as discussed later in the report.

³²See 18 FAM 301.4 entitled, "Department of State Program and Project Design, Monitoring and Evaluation. State's Foreign Affairs Manual, 18 FAM 301.4 addresses the need for continuous monitoring in order to achieve bureau, office, agency-wide goals and objectives. Monitoring data indicate what is happening and help determine if implementation is on time or if any timely corrections or adjustments may be needed in order to improve efficiency or effectiveness.

³³[GAO-14-704G](#)

Based on our analysis of data and a sample of requests, we found that OCS/L's lack of monitoring meant that State missed opportunities to ensure the timely processing of some requests, particularly during the document review and clearance stage. To identify the factors that affect the amount of time that State takes to process service requests, we analyzed a non-generalizable sample of 16 requests that we selected to ensure we obtained detailed information on cases that took above the average amount of time, below the average amount of time, and about the average amount of time to complete. We discussed the circumstances of each of the 16 requests with OCS/L and embassy officials, as well as with plaintiff's attorneys. We identified several reasons that cases took longer than average to complete:

- Two cases took longer than average to complete because of staff turnover in the relevant Department of State offices in Washington, D.C.
- One case took longer than average to complete when an OCS/L contractor in Washington, D.C. failed to promptly distribute the packages received by mail. In that instance, it took OCS/L 323 days to clear and send the service request to the embassy after having received the request from the court.³⁴
- One case took longer than average to complete when a State official at an embassy in Africa forgot to complete the service request. The request was completed only after the official's successor arrived and noticed that the service request had not been completed. In this instance, service took 563 days to complete, of which 475 days were spent at the embassy.
- One case took longer than average to complete because a State official overseas misplaced two boxes of supporting documents that accompanied the service request. According to plaintiff's attorneys, only after they called to ask about its status did OCS/L contact the embassy to determine why the necessary documents had not been delivered to the defendant state.
- Two cases took longer than average to complete because State officials failed to notice that the protecting power had not recorded the date of service completion on the diplomatic note for two service

³⁴In addition to the delays found in the case studies, the data show several additional delays during the document review and clearance stage. For example, the longest time that it took for OCS/L to complete stage 2—clearing and sending to the embassy a service request—was 516 days.

requests. In one case, the missing date was noticed by the plaintiffs' attorneys only after OCS/L had notified the court that service had been completed. Once alerted to the error by plaintiffs' attorneys, OCS/L took prompt action by requesting an amended diplomatic note from the protecting power's Ministry of Foreign Affairs, but it took 2 additional months to obtain the document.

OCS/L's lack of monitoring also contributed to a loss of revenue. Based on our analysis of available data and records kept by the U.S. Embassy Bern we determined that the time it took OCS/L to review and clear service requests led to OCS/L's waiving the fees because checks for payment of services had expired by the time they reached the U.S. Embassy in Bern.³⁵ In one such instance, OCS/L took 131 days to send the request to Bern. OCS/L directed consular officials to proceed with the provision of service without receiving payment. Our analysis showed that this occurred in approximately 27 percent of all available service requests handled by Bern in 2016 and 2017. The amount of revenue lost was approximately \$57,000.³⁶

In June 2018, OCS/L officials developed a new manual that provides a written description of the roles and responsibilities of various officials in OCS/L in completing service requests. However, the manual does not require periodic monitoring of the time spent completing service by embassies. Without monitoring by OCS/L, State cannot ensure timely processing of service requests or prevent losses in revenue.

³⁵According to plaintiffs' attorneys as well as State and embassy officials, many cashier's checks are valid for a limited amount of time after which, they expire. According to OCS/L, cashier's checks are the only accepted means of payment for service requests because State's office that handles financial transactions only accepts this form of payment for services provided domestically. As of August 2018, OCS/L was attempting to determine the feasibility of using electronic systems such as Pay.Gov as a means for plaintiff's attorneys and others requesting services from State in the United States to pay service fees electronically.

³⁶Because we did not review the records for all embassies completing service, the amount of revenue lost could be larger. According to State records, all of the checks provided for service requests that were initiated between January 1, 2018 and May 30, 2018 were processed and the fees collected.

OCS/L Has Not Analyzed Data on Its Completion of Service

OCS/L officials said that they had not conducted any analysis that might identify the opportunities to improve their performance. State's guidance in the Foreign Affairs Manual stresses the importance of assessing what is and is not working well in a program.³⁷ However, OCS/L officials told us that they had not conducted an assessment because they did not have good data and documentation to use in assessing what was and was not working well in their completion of service.

OCS/L officials provided several reasons for some cases taking longer than average in the process, in addition to those previously discussed, but these reasons were not informed by data. These included: (1) incomplete packages provided by plaintiffs' attorneys; (2) the time it takes to deliver diplomatic pouches to embassies, which can vary by post; (3) delays due to some foreign governments' avoidance or delay in accepting meetings with consular staff; and (4) consular officials' level of familiarity with service requirements as well as heavy consular workloads. Our analysis of available data showed that the document review and clearance stage in Washington, D.C. took longer than the other stages. However, we were unable to determine the extent to which the longer time taken in Washington, D.C. was due to documentation that was missing from the package that was sent by plaintiffs' attorneys because OCS/L only recorded a handful of cases where this occurred and did not record the date when OCS/L first received the service request or the date it determined the request was complete and free of errors. Moreover, while OCS/L officials attributed most of the time it took to complete the process to the time it takes to deliver documents overseas, our analysis showed that most of the time spent processing requests was consumed by OCS/L in the document review and clearance stage in Washington, D.C. Without periodically analyzing data on service requests, as called for in the Foreign Affairs Manual, OCS/L will not have a sound basis for determining the causes for delays in completing service and how to make improvements to eliminate those delays and reduce service completion times. In September 2018, OCS/L officials told us that they planned to begin using data to, among other things, measure current and past FSIA workload and performance and identify areas for improvement. However, they could not provide details or documentation of this effort.

³⁷See State's Foreign Affairs Manual 18 FAM 301 entitled "Managing for Results," which stresses the importance of analyzing data to determine what is and is not working well in a program.

State's Bureau of Consular Affairs Has Not Established Performance Standards to Manage and Improve Its Provision of Service Under the FSIA

Consular Affairs has not established performance standards for the full process used to complete service requests. Consular Affairs officials said they have not established performance measures for the full process because they do not have good data to do so. When we began our review, Consular Affairs did not have any time frames for completing service requests. However, in June 2018, OCS/L issued a new manual that includes timeframes for certain steps of completing service within OCS/L. For example, the manual states that once OCS/L has received a service request package, the package must be reviewed within 2 business days to determine whether it contains any errors, omissions, or other issues that must be resolved. The manual also states that if OCS/L does not get clearance to send the package to the embassy within 2 weeks, then a senior OCS/L official must be notified for further action. However, the manual does not specify a deadline for staff to contact the plaintiff's attorney to correct any problems with the package, such as missing documents, nor does the manual establish an overall timeframe for State to complete the document reviews and clearances in Washington, D.C. and U.S. embassies.

GAO's prior work has demonstrated the importance of setting performance standards that can be used across a range of management functions to improve results.³⁸ In addition, federal internal control standards state that management should design control activities—such as setting of performance standards—to achieve objectives. Setting performance standards, among other things, can provide managers with crucial information on which to base their organizational and management decisions.³⁹

Consular Affairs has established performance standards for some of its other activities. For example, in fiscal year 2017 Consular Affairs established performance standards for processing passport applications within published timeframes and ensuring that visa applicants were interviewed within a 3-week period. For fiscal years 2018 and 2019, among other goals, the Bureau established a performance standard of 100 percent to activate appropriate consular crises response tools, such

³⁸See for example, GAO, *Managing for Results: Selected Agencies Need to Take Additional Efforts to Improve Customer Service*, [GAO-15-84](#); (Washington, D.C.; Oct. 24, 2014). The report discusses the importance of setting performance standards that can be used across a range of management functions to improve results.

³⁹[GAO-14-704G](#)

as travel warnings and security and emergency messages, within 6 hours after notification of a crisis event. Without performance standards for completing service requests, Consular Affairs and OCS/L managers are limited in their ability to monitor performance and perform effective program management and oversight.

Conclusions

Plaintiffs suing foreign states in courts of the United States including some victims of state-sponsored terrorism, sometimes rely on State to promptly serve legal documents to foreign countries to receive compensation for their losses. We found that the process of serving legal documents to foreign countries takes an average of 5 months, but that some cases take considerably longer. In analyzing cases from 2007 through 2017, we identified multiple opportunities to improve the management and oversight of the process. Despite State's recent steps to improve how it completes service, additional actions could help to ensure that service is completed in a timely manner. For example, guidance that specifies information that OCS/L must maintain in its case tracker and case files would help ensure that State has complete and accurate information on service requests. By having better record-keeping and more accurate and complete data, State will be able to monitor its progress in completing service requests and develop performance standards to measure timeliness. Additionally, periodically analyzing the data could help identify ways to improve timeliness.

Recommendations for Executive Action

We are making the following five recommendations to the Department of State:

The Secretary of State should ensure that the Assistant Secretary of State for Consular Affairs requires OCS/L to update guidance to specify the data to be recorded in the service request case tracker. The required data should include key dates for all four stages of the process for completing service, such as the date the court sent the request to OCS/L. (Recommendation 1)

The Secretary of State should ensure that the Assistant Secretary of State for Consular Affairs requires OCS/L to update its record-keeping guidance for service requests to include a standard list of documents to maintain in service request case files. (Recommendation 2)

The Secretary of State should ensure that the Assistant Secretary of State for Consular Affairs requires OCS/L to monitor the status of service requests. (Recommendation 3)

The Secretary of State should ensure that the Assistant Secretary of State for Consular Affairs requires OCS/L to periodically analyze its data on service requests to identify the causes of any delays in State's completion of service and take corrective actions as appropriate. (Recommendation 4)

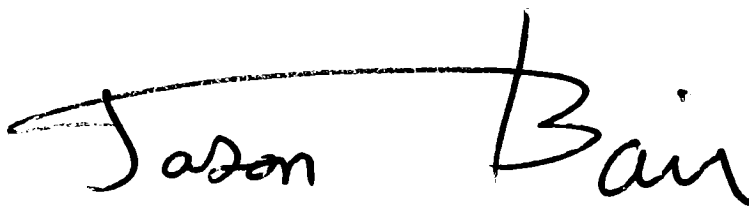
The Secretary of State should ensure that the Assistant Secretary of State for Consular Affairs establishes performance standards for completing service, including timeframes for completing the various processes at State and at U.S. embassies. (Recommendation 5)

Agency Comments

We provided a draft of this report to State, the Department of Justice (Justice), and the Administrative Office of the U.S. Courts for review and comment. We received written comments from State that are reprinted in appendix III. In its comments, State concurred with all five of our recommendations and identified actions it planned to take to address them. Justice and the Administrative Office of the U.S. Courts told us that they had no formal comments on the draft report. State, Justice, and the Administrative Office of the U.S. Courts also provided technical comments, which we incorporated as appropriate.

We are sending copies of this report to the appropriate congressional committees, the Secretary of State, the Deputy Attorney General, and the Director of the Administrative Office of the U.S. Courts. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any further questions about this report, please contact me at (202) 512-6881 or BairJ@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix III.

A handwritten signature in black ink that reads "Jason Bair". The signature is written in a cursive style with a long horizontal stroke over the word "Jason".

Jason Bair
Acting Director
International Affairs and Trade
U.S. Government Accountability Office

Appendix I: Objective, Scope and Methodology

In this report, we examine (1) how the Department of State (State) completes service under the Foreign Sovereign Immunities Act (FSIA) and how long it takes to perform this function and (2) whether State has implemented key controls in record-keeping, monitoring, analysis and performance management for completing service requests.

To describe how State completes service, we obtained and reviewed State and embassy documentation such as regulations, official guidance, and case files. We also met with officials of State's Bureau of Consular Affairs. Consular Affairs' Directorate of Overseas Citizens Services/Office of the Legal Affairs (OCS/L) is responsible for managing State's completion of service. Based on discussions with OCS/L and documentation, we mapped how OCS/L manages the process in Washington, D.C and confirmed the process that we mapped with State officials. We met with officials from State's Diplomatic Pouch and Mail Office, who described how they put together and track diplomatic pouches from State to embassies overseas. Because the role of consular and other officials at embassies overseas in completing service to defendant foreign governments is crucial, we also met with consular and other officials at the U.S. Embassies in Berlin, Germany; Bern, Switzerland; and Prague, Czech Republic.

We selected these embassies based on (1) the number of service requests each handled, and (2) the method each uses to complete service. The U.S. Embassies in Bern and Prague ranked first and second on the list of embassies managing service requests, while the U.S. Embassy in Berlin ranked fourth. In the Czech Republic, we met with officials of the Czech Ministry of Foreign Affairs, who described how they receive and complete service requests from the U.S. Embassy in Prague. Similarly, the Swiss Ministry of Foreign Affairs provided us with a detailed description of how it receives and completes service on the Iranian government. We cannot generalize our findings from these two countries to any other countries, and note that the majority of the other countries received five or fewer requests for the 11 years we reviewed.

To describe the process used by courts and attorneys that represent plaintiffs filing lawsuits against foreign governments under FSIA to request service from State, we met with court officials and plaintiffs' attorneys. Using a spreadsheet that State provided us in December 2017, we identified the top four federal courts that requested service from State from 2007 to 2017 (the most recent full year available) and met with officials from three of these courts. We based our description of the procedure followed by court officials and attorneys say they follow at the

United States District Court for the District of Columbia because about three-fourths of all service requests were made through that court. Using a spreadsheet that State had provided, we also identified and met with 10 firms that had requested service from State. The firms that we met with had a mix of experience requesting service from State. Some firms had extensive experience and others had little experience requesting service from State. We cannot generalize the responses to these firms to all firms that requested service from State.

To determine the length of time it took for State to complete service from 2007 through 2017, in December 2017 we obtained a spreadsheet that OCS/L developed. This spreadsheet documents various milestones in the completion of service requests made during this period—for example, when the court sent the request to OCS/L, when OCS/L received the request, when OCS/L sent the request to the appropriate embassy, and when OCS/L notified the court that service had been completed. Because OCS/L officials provided data that was not complete, we developed an improved spreadsheet, using the spreadsheet we received in December 2017 as our starting point and improving the spreadsheet through the use of supplemental data. To develop the improved spreadsheet, we first identified requests for service, based on our examination of the original spreadsheet, which appeared to have not been completed or were not related to FSIA service. We requested clarification from State about whether we should keep those requests in our improved spreadsheet, and where appropriate, removed some service requests. We then checked the remaining requests in the original spreadsheet against court data obtained from the Lexis-Nexis database Courtlink. After completing this process, we once again asked OCS/L officials for clarification about certain service requests and incorporated their feedback. In June 2018, State provided us with a copy of a new case tracker that OCS/L officials had created. We incorporated data from 2017 into our improved spreadsheet and once again checked the service requests in our improved spreadsheet against court records. After making the appropriate modifications, we had 289 requests for service between 2007 and 2017. We processed the data in our improved spreadsheet using data analysis software.

We estimated, among other things, the mean and median lengths of time it took for State to complete service from 2007 through 2017, as well as for the three of the four key stages of the process for which State is fully responsible. We estimated the time elapsed as the difference in calendar days between the key dates that were available, for example, between the date State notified the court that service was completed and the date

the court had sent to OCS/L the request for service. The three stages for which we were able to estimate timeliness were (1) the days between the date State received the request from the court and the date OCS/L sent the request to the appropriate U.S. embassy overseas and, (2) the days between the date OCS/L had sent the request to the embassy and the date when service was completed overseas and, and (3) the days between the date that service had been completed by the embassy or protecting power and the date when OCS/L notified the court that service was completed. The time taken for these stages includes the times for a number of activities that we could not precisely estimate, such as the time it took for the court's request to reach OCS/L and the time taken for service documentation to be sent via diplomatic pouch to and from the appropriate embassy. We used the date the court sent its request to OCS/L as our start date because that was the most complete start date data among the three options available. We restricted our analysis to those cases for which State had completed service.

One limitation that we had to address in our analysis was the lack of certain key dates in OCS/L's spreadsheet for some of the requests. In particular, while the date we used as the start date (which was the date on which the court sent its request for service to OCS/L) had the most complete data of the three possible start dates, the data were missing for 59 of the 289 requests for service¹ that we were able to document.² We calculated overall time elapsed for the document review and clearance stage using that date, but then had to do some sensitivity analysis to check that the missing dates were not skewing our results. To perform the sensitivity analysis, we identified those instances when the date the court sent its request to OCS/L was missing, but an alternative start date, either the date of the request letter, or the date when OCS recorded receiving the request, was present.³ We were able to identify 40 instances where this happened for the 59 missing cases. Our calculations using

¹As discussed earlier, we analyzed 229 cases. An additional case had a start date but no end date because State had not completed service as of the date of our analysis.

²The dates for the other stages in the process were much more complete. The "sent to post" date was available for 272 of the 289 requests for service, the date that "service was completed" was available for 285 of the 289 requests for service, and the date that "OCS notified the court" was available for 286 of the 289 service requests we documented.

³We used the "court sent to OCS/L" date as our start date because this was the most complete data we could obtain. It was available for 230 cases as noted above. By contrast, the "request letter" date was available for 210 cases, while the "receipt by OCS/L" date was available for only 51 service requests.

estimations⁴ of the missing “court sent to OCS/L” dates indicated that the results we present would likely have changed minimally if we could have included them. In addition, we conducted further analysis of the characteristics of the 17 service requests that had no start date of any kind and found that these were generally similar to ones for which we had start dates. However because these simulations indicated that there would be minor changes, we present qualified rounded numbers in the main body of the report.

We also used the improved spreadsheet to extract other information, and calculate timeliness by the years for which the requests were made, the courts making requests for service, the countries for service, and the date of service requested. In addition, we estimated the time elapsed for service for each case for which we had data and generated a list of service requests sorted from the ones that took the longest to those that took the least amount of time to complete.

To determine whether State has implemented key controls in record-keeping, monitoring, analysis, and performance management for completing service requests, we met with OCS/L officials in Washington, D.C. to discuss how they manage the process, as well as with consular officials from the U.S. Embassies in Berlin, Bern, and Prague. We also examined the 59 service request case files for requests received in 2015 and 2016. This sample is not generalizable to all requests for service between 2007 and 2017. We determined to what extent these files were missing key documents, such as a signed copy of the notification letter or the diplomatic note. We also reviewed the December 2017 spreadsheet that we had obtained from State to determine to what extent the spreadsheet contained missing data as well as a November 2017 spreadsheet. As discussed earlier, because OCS/L officials did not provide complete data, we created a separate improved spreadsheet using court data. We analyzed the data in the improved spreadsheet we created to determine where bottlenecks were occurring. We also used the improved spreadsheet to help identify and review 16 service requests in more depth with OCS/L officials. We selected these 16 service requests

⁴Specifically, we estimated the difference between the dates, in calendar days, for those instances when two or more were available. We found that the median difference between the “request letter” and the “court sent to OCS/L” date was 3 days, while the median difference in the “court sent to OCS/L” date and the “receipt by OSC/L” date was 4 days. In our simulations, we used these medians to adjust those dates and make them more consistent with the “court sent to OCS/L” dates.

to include: 6 requests that took well above the average number of days to complete,⁵ 5 that took about the average amount of time to complete, and 5 that took below the average amount of time to complete. We met with OCS/L and consular officials, as well as plaintiffs' attorneys to discuss events related to the 16 requests we had identified for review. We obtained documentation from the U.S. Embassies in Bern and Prague for the actions taken in providing service, the controls implemented, and the records of transactions that they maintained. We met with officials from three principal courts that request service, as well as officials of the U.S. Victims of State Sponsored Terrorism Fund (Fund) to discuss how service could affect the progress of court cases and the compensation awarded. Finally, we assessed State's implementation of key controls against applicable laws, including the FSIA and Government Performance and Results Act of 1993, as well as State guidance and federal internal control standards.

To determine the reliability of the data used in the report, we manually checked State's December 2017 spreadsheet as well as the improved spreadsheet that we developed for logical and other errors—for example, for dates that seemed out of order. We also performed electronic checks on the improved spreadsheet to identify logical and other errors. Where appropriate, we made adjustments to the improved spreadsheet. Based on the results obtained, we determined that the improved spreadsheet that we developed is sufficiently reliable for our use, though we note the limitations in terms of the start dates, which required us to conduct sensitivity analyses, as described earlier in this OSM, to increase our confidence in the overall estimates for timeliness and for the document review and clearance stage of the process (stage 2). As noted above, we are rounding our estimates to reflect this limitation and qualifying them as approximations.

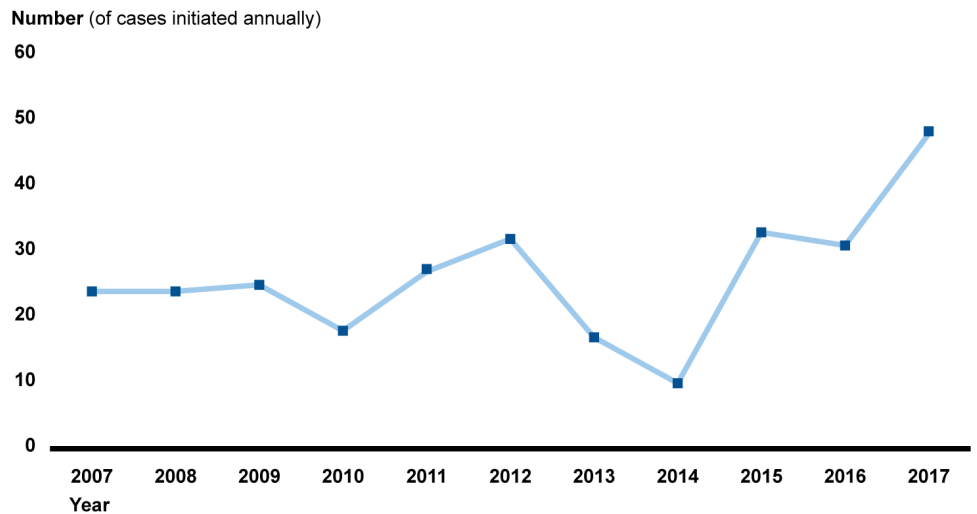
We conducted this performance audit from September 2017 to December 2018 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

⁵We included six requests that took well above the average amount of time (as opposed to five) to complete because two of the service requests were completed at the same time by the same protecting power.

Appendix II: Additional Data on How Long It Takes to Complete Service

We identified a total of 289 verified requests for service from 2007 to 2017. Verified requests are those that remained after we compiled the lists the State Department provided, scrubbed them for duplicates and instances when the requests were subsequently withdrawn, and checked the data against court records in the Court Link database. Figure 5 shows how those cases were distributed by year over this period.

Figure 5: Verified Requests per Year from 2007 through 2017



Source: GAO analysis of State Department and U.S. court data. | GAO-19-139

Note: The analysis is based on all 289 cases for which the Department of State provided data.

The average number of days State took to complete service varied notably by year from 2007 to 2017, as Figure 6 demonstrates.¹ The average (mean) ranged from 77 days in 2011 to 206 days in 2008. We can also see variation in the most recent years. The mean in 2015 was 130 days while in 2016 it was 205 days.

Figure 6: Average Number of Days Taken to Complete Service by Year



Source: GAO analysis of State Department and U.S. court data. | GAO-19-139

Note: This analysis is based on all 229 cases for which there was sufficient data. The year represents the year the request for service was received by the State Department.

We also found that cases for European and Eurasian countries, such as Switzerland and Germany, had much lower means and medians than those sent through protecting powers to Iran and Syria. While the averages for Iran and Syria were 158 and 215 days respectively, the cases for Germany, Switzerland, the Holy See, Russia, and Poland all had averages of 106 days or less. In table 3 we provide information on the length of time it took to complete service requests by country.

¹We present both the means and the medians because the distribution is somewhat skewed, with the mean being influenced by a relatively small number of cases that took exceptionally long periods of time. It is standard to present the median as well as the mean in this type of situation.

Appendix II: Additional Data on How Long It Takes to Complete Service

Table 3: Timeliness by Defendant Country, 2007 through 2017, By Number of Cases

| Defendant Country | Number of cases | Days Taken (Mean) | Days Taken (Median) |
|----------------------------|-----------------|-------------------|---------------------|
| Iran | 150 | 157.95 | 143.00 |
| Syria | 18 | 214.61 | 191.50 |
| Sudan | 14 | 182.21 | 134.00 |
| Germany | 6 | 98.00 | 75.00 |
| Holy See | 4 | 106.00 | 110.50 |
| Turkey | 3 | 80.33 | 80.00 |
| Venezuela | 3 | 123.67 | 113.00 |
| Libya | 3 | 175.67 | 119.00 |
| Russia | 3 | 92.67 | 68.00 |
| Namibia | 3 | 43.33 | 41.00 |
| People's Republic of China | 2 | 203.50 | 203.50 |
| Iraq | 2 | 110.50 | 110.50 |
| Morocco | 2 | 94.00 | 94.00 |
| Kuwait | 2 | 212.50 | 212.50 |
| Bolivia | 2 | 159.00 | 159.00 |
| | | Actual | |
| Cuba | 1 | 260.00 | |
| Dominican Republic | 1 | 80.00 | |
| Congo | 1 | 122.00 | |
| Lebanon | 1 | 155.00 | |
| Poland | 1 | 85.00 | |
| Switzerland | 1 | 40.00 | |
| India | 1 | 89.00 | |
| Canada | 1 | 76.00 | |
| Equatorial Guinea | 1 | 76.00 | |
| Gabon | 1 | 563.00 | |
| Ukraine | 1 | 170.00 | |
| Yemen | 1 | 269.00 | |

Source: GAO analysis of data from the Department of State and U.S. courts. | GAO-19-139

Notes: When there are only two cases for a country, the median, by definition, will be the same as the mean. Actuals are presented for those countries that only had one verified case. Analysis is based on a total of 229 cases.

The countries of Iran, Sudan and Syria were designated state-sponsors of terrorism during the entire period covered by our analysis. Iran was designated on January 19, 1984, Sudan on August 12, 1993, and Syria on December 29, 1979. Collectively, requests for service in suits against the governments of these three countries accounted for nearly 4 out of every 5 of the cases (182/229).

We looked more broadly at country type, and created three groups, one for the two countries where the State Department has to rely on the protecting powers for service, namely Iran and Syria, another group for the European and Eurasian nations, and another group for all remaining countries. Service completion was fastest for the European nations.² This information by country groupings is presented in table 4.

Table 4: Overall Days (Means and Medians) by 3 Country Groupings

| Country Groups | Days Taken | | |
|---------------------------------|------------|------|--------|
| | N | Mean | Median |
| Protected power countries | 168 | 164 | 147 |
| European and Eurasian countries | 19 | 96 | 80 |
| All other countries | 42 | 163 | 118 |

Legend: N = 229

Source: GAO analysis of data from the Department of State and U.S. courts. | GAO-19-139

²We conducted a sensitivity analysis using simulated start dates for cases lacking these dates when that was feasible, and found that the simulated cases would have had broadly similar means and medians to the ones presented in this table.

Appendix III: Comments from the Department of State



United States Department of State
Comptroller
Washington, DC 20520

November 21, 2018

Thomas Melito
Managing Director
International Affairs and Trade
Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548-0001

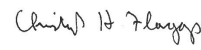
Dear Mr. Melito:

We appreciate the opportunity to review your draft report, "STATE DEPARTMENT: Better Oversight and Controls Could Improve Timely Delivery of Legal Documents for Terrorism Victims, GAO Job Code 102321.

The enclosed Department of State comments are provided for incorporation with this letter as an appendix to the final report.

If you have any questions concerning this response, please contact Jared Hess, Attorney Advisor, Office of Overseas Citizens Services, Legal Affairs, Bureau of Consular Affairs at (202) 485-6173.

Sincerely,


Christopher H. Flagg

Enclosure:
As stated

cc: GAO – Jason Bair (Acting)
CA/OCS – Michelle Bernier-Toth
OIG - Norman Brown

Department of State Comments on GAO Draft Report

**STATE DEPARTMENT: Better Oversight and Controls Could Improve Timely Delivery
of Legal Documents for Terrorism Victims**
(GAO-19-139, GAO Code 102321)

Thank you for the opportunity to comment on the GAO draft report, entitled “*Better Oversight and Controls Could Improve Timely Delivery of Legal Documents for Terrorism Victims.*”

Recommendation 1: The Secretary of State should ensure that the Assistant Secretary of State for Consular Affairs requires OCS/L to update guidance to specify the data to be recorded in the service request case tracker. The required data should include key dates for all four stages of the process for completing service, such as the date the court sent the request to OCS/L.

The Department agrees that collecting certain data can assist the Department in better monitoring service requests.

In fulfillment of this and other report recommendations, the Department has improved its case tracking methods and expanded the number of data fields it records with respect to requests under 28 U.S.C. § 1608(a)(4). For example, within the last year CA/OCS/L has developed and launched an expanded service request tracking database. As noted in the report, previous monitoring databases only recorded three date fields, whereas the new database includes 13 date fields per service request to monitor the status and measure its progression through all four stages of the process from receipt by CA/OCS/L to the return of the certified copy of the diplomatic note of transmittal to the court. Additionally, with the new tracker we perform a check of and collect 20-22 different pieces of information to ensure the completeness of any new requests and various aspects of the request. Such information is, in part, a way to provide quality assurance that requests are complete and the necessary documentation has been provided. The new tracker with these additional data points along with others will provide a useful tool to measure and analyze current and past workload and service performance in order to assist CA/OCS/L in identifying areas for further improvements.

Along with the development of a new service request tracking database, CA/OCS/L developed corresponding guidance for CA/OCS/L staff that provides a detailed roadmap of FSIA case processing, explains the various roles and responsibilities of persons and offices throughout the Department who assist with handling FSIA cases, and identifies the various actions necessary to successfully and promptly process these requests, including the data to be recorded in the case tracking database.

With respect to the types of data we collect, CA/OCS/L’s primary focus is on the Department’s internal processes and any additional data collection efforts will focus on how the Department can improve our processes. While we do not foreclose the possibility that CA/OCS/L may collect information regarding the date a court sends a request to the Department, such

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information 1) may not be easily collected as we often only learn of a request once it is received, 2) is not always identifiable from court docket information, and 3) would have limited value for CA given the Department has little to no ability to impact the time it takes for a mail carrier to deliver documents to the Department. Nevertheless, to minimize the likelihood of documents being misplaced or lost in transit in the event that a request is submitted to the Department, we have provided an email address on our website so a court clerk or plaintiff's counsel may notify CA/OCS/L of requests being sent to the Department and to inquire about the status of their request. Further, upon the receipt in CA/OCS/L of a new request, we will provide confirmation to plaintiff's counsel of receipt and provide them with a point of contact in our office.

Recommendation 2: The Secretary of State should ensure that the Assistant Secretary of State for Consular Affairs requires OCS/L to update its record-keeping guidance for service requests to include a standard list of documents to maintain in service request case files.

The Department agrees that CA/OCS/L should update its record keeping guidance to include a list of standard documents to maintain in service request files.

In fulfillment of this recommendation, CA/OCS/L has provided updated written guidance for CA/OCS/L staff that includes guidance on collecting and maintaining records with respect to service requests pursuant to 28 USC 1608(a)(4) and 22 CFR 93.1. Specifically, it identifies the standard documents that should be maintained in case files. In reviewing CA/OCS/L's progress with respect to creating and maintaining these records, CA/OCS/L reviewed the 25 requests received and completed in CY2018 as of November 2, 2018, and found 99% of these documents (198 out of 200) are included in the cases files. CA/OCS/L will continue to review and update existing guidance and implement further internal controls as necessary to ensure the appropriate collection, maintenance, and disposition of all necessary documents.

Recommendation 3: The Secretary of State should ensure that the Assistant Secretary of State for Consular Affairs requires OCS/L to monitor the status of service requests.

The Department agrees additional monitoring of requests may improve timely processing of service requests.

CA/OCS/L has taken a number of actions within the last year to improve the monitoring of pending requests and the internal controls to promptly serve documents and avoid delays. With respect to CA/OCS/L's receipt and processing of new requests, as stated previously, CA/OCS/L has instituted a new service request tracking and monitoring system that provides up-to-date information on the status of any request. At any time, the relevant CA/OCS/L staff can access the database to determine the status of any request and take action as needed. Additionally,

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CA/OCS/L has 1) trained the relevant staff on the proper identification, receipt, and handling of FSIA requests to ensure the relevant staff are immediately aware of new requests, 2) instituted controls with respect to handling of the physical documents, 3) held weekly staff meetings to review requests and address related issues, and 4) reviewed and revised standard guidance and correspondence to improve consistency and decrease the likelihood of delays.

With respect to monitoring requests when they are with other offices in the Department or at a U.S. embassy abroad, CA/OCS/L has updated its guidance to require staff to monitor pending requests by regularly following-up with the relevant offices or embassies. Such controls include articulating timelines for contacting offices or embassies that have not taken or notified CA/OCS/L of particular actions. For example, contacting the judicial assistance officer at the relevant U.S. embassy to confirm receipt of a request following a specific period of time after CA/OCS/L transmits the documents to the embassy. In furthering these monitoring tasks, CA/OCS/L has added data fields which represent significant steps in the process, which allows CA/OCS/L to quickly identify those cases that have not progressed to the next stage in the process in a timely manner and whether any corrections or adjustments may be needed.

Finally, CA/OCS/L will continue to review its practices and guidance to identify areas for improved monitoring both internally and with other offices within the Department and at U.S. embassies.

Recommendation 4: The Secretary of State should ensure that the Assistant Secretary of State for Consular Affairs require OCS/L to periodically analyze its data on service requests to identify the causes of any delays in State's completion of service and take corrective actions as appropriate.

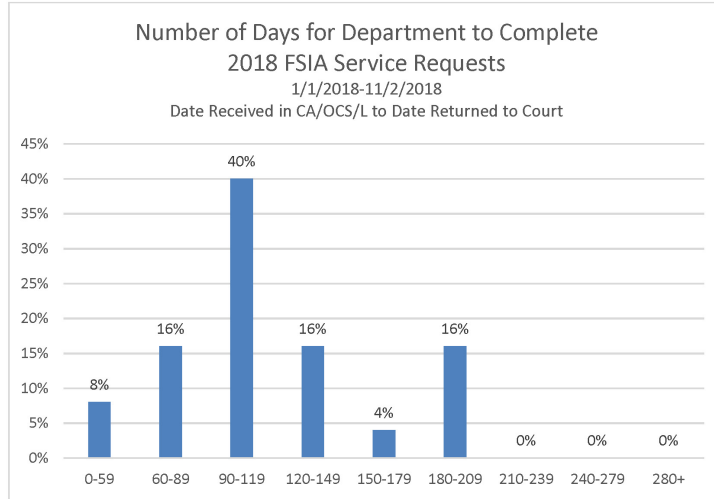
The Department agrees periodic analysis of requests may improve timely processing of service requests and avoid delays.

As stated above, CA/OCS/L has taken a number of actions within the last year to analyze and improve its internal controls to promptly serve documents and avoid delays. In particular, the new tracker provides a useful tool to collect data and enable CA/OCS/L to analyze service performance to identify delays and areas for improvement.

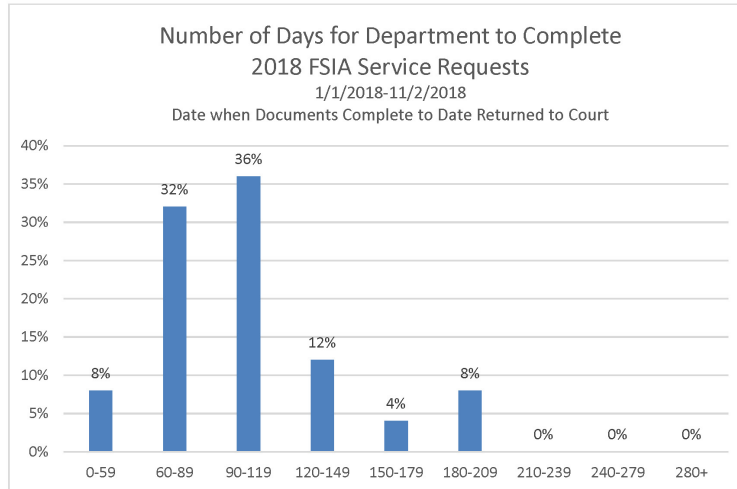
Additionally, CA/OCS/L has instituted regular staff meetings since December 2017 to discuss pending requests and related issues and begun to produce monthly and quarterly reports on pending requests for its management. As CA/OCS/L collects more data in its new tracker, it will be in a better position to analyze past and present performance and expects to improve or revise any reports. For example, with respect to the 25 requests received in 2018 and completed as of November 2, 2018, the average number days to complete a request (from date received in CA/OCS/L to date returned to the court) was 115 days or just under 4 months.

Appendix III: Comments from the Department of State

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When accounting for those requests where there was one or more deficiency with the request (e.g. missing documents), the average completion time dropped to 104 days or 3.5 months.



While CA/OCS/L is encouraged by such information, CA/OCS/L will continue to work to identify areas for improvement.

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Recommendation 5: The Secretary of State should ensure that the Assistant Secretary of State for Consular Affairs establishes performance standards for completing service, including timeframes for completing the various processes at State and at U.S. embassies.

The Department agrees articulating standard timeframes for particular actions within the Department and at U.S. embassies may assist in the prompt service of requests; however, the Department would note that many requests for service require the reliance on a foreign state to take particular action in effecting service.

As noted in the report, in June 2018 CA/OCS/L issued a new manual that includes timeframes for certain steps of completing service within CA/OCS/L. To the extent that CA/OCS/L has control over particular steps in the process, it has updated its guidance with additional standards for when CA/OCS/L staff should take certain steps. For example, the updated guidance indicates how soon CA/OCS/L should notify a plaintiff's attorney of issues with the request. Other steps in the process require action by parties outside of the Bureau of Consular Affairs and the Department. While CA/OCS/L is unable to impose performance standards on those persons, officers, or offices, CA/OCS/L has updated its guidance to set timelines for when it will follow-up with external offices or embassies where requests are pending. As additional data is collected, CA/OCS/L may revise these and other standards with a view toward ensuring they are objective, measurable, and realistic.

Finally, given that a significant number of requests for service are transmitted through a protecting power, the Department does not control every step in the service process and is unable to guarantee a particular timeframe for service to be completed. However, the Department will work with its partners, consistent with the terms of any relevant protecting power arrangement, to address potential obstacles to serving the documents.

Appendix IV: GAO Contact and Staff Acknowledgements

GAO Contact

Jason Bair, (202) 512-6881 or bairj@gao.gov

Staff Acknowledgements:

In addition to the contact named above, Kim Frankena (Assistant Director), Claude Adrien, José M Peña III, Martin De Alteriis, Candace Caruthers, Mark Dowling, Chris Keblitis, Aldo Salerno and Hannah Heidrich made key contributions to this report. Travis Cady and Jeff Isaacs provided technical assistance.

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