DOJ Letterhead

Criminal Aliens Released From INS Custody

In connection with a congressional subpoena for data showing rates of recidivism among criminal aliens, the Immigration and Naturalization Service (INS) gathered and analyzed the immigration and criminal records of two groups of aliens. The first group comprises aliens with prior criminal records released from INS detention between October 1, 1994 and May 31, 1999; the second group represents all aliens admitted to the United States through primary inspection at airports during Fiscal Year 1998. While the results of this study show that recidivism among aliens is no higher than among the general population, the results nevertheless raise concerns and underscore the need for ongoing efforts to identify, detain and remove criminal aliens from the United States, and to improve INS' ability to prevent their return.

What is INS Doing to Protect Communities from Criminal Aliens?

Protecting the public from criminal aliens has been and continues to be a top INS law enforcement priority. Over the past several years, INS has dramatically increased the number of criminal aliens removed from the United States. Between FY 1994 and FY 1999, INS doubled the number of criminal alien removals -- from 30,158 in FY 1994 to 63,012 in FY 1999. That figure represents more than 170 criminal removals every day during that period.

INS' success in removing criminal aliens is directly tied to its ability to detain them. The INS has worked with lawmakers to secure funding to expand its detention and removal efforts. To facilitate the removal of aliens, INS has expanded its detention space from a daily usage of about 5,500 beds in FY 1994 to 18,200 in FY 1999. Annual detention resources have grown from $226 million to $807 million over the same period. This has allowed INS to detain a total of more than 300,000 criminal aliens from October 1, 1994 to May 31, 1999 and to remove approximately 245,000 criminal aliens during the same time period.

Why Are Criminal Aliens Released?

The release of aliens with criminal records is done for a variety of reasons, under procedures established by law on the authority of several different entities. Some aliens are released from INS custody simply because they prevailed in their deportation cases and there is no longer any legal authority to detain them. Other aliens may have been released while their deportation proceedings are still pending. This may be done by INS District Directors, by federal judges, by immigration judges, or by the Board of Immigration Appeals after bond hearings. In addition, some aliens who have final deportation orders may be released after having been detained because they come from countries such as Cuba, Vietnam, Laos, and Cambodia, that presently will not take them back. Under all of these scenarios, the individuals have served and completed their criminal sentences in the U.S. Prior to making a discretionary release decision, all available information is reviewed in a deliberative process to determine if the alien poses a threat to public safety or is a flight risk if released from custody under supervision as with a bond determination in a criminal case.

The INS will continue to review and analyze the results of this study to evaluate its custody determination processes and identify possible improvements to the system. INS is also ensuring that all available information on the criminal aliens who were released, and later committed the most serious crimes, has been entered into all INS lookout databases and is shared with other law enforcement agencies. In those cases where a criminal alien has been charged with a serious violent crime subsequent to release but the disposition of the case is unknown, INS will seek to obtain information, update its records, and take any further appropriate action in coordination with local law enforcement agencies.

Aggravated felons and other criminals who reenter the United States unlawfully are subject to severe criminal penalties, and the Department is extremely serious about enforcing those criminal statutes. In 1999, for example, the United States Attorneys brought nearly seven times the number of prosecutions for illegal entry after deportation, as compared to 1992.

The INS remains fully committed to protecting the public from criminal aliens and will continue to focus its efforts on the detention and removal of dangerous criminal aliens from our communities.

Suicide note includes racial, ethnic attacks

By Michael A. Fuoco
PITTSBURGH POST-GAZETTE

WILKINSBURG, Pa. — A four-page suicide note and a five-page creed titled "Personal Legit Feelings" discovered in Ronald Taylor's apartment show the suspect in last week's shooting rampage at times reflecting on long-standing health problems and at others spewing racial and ethnic attacks from which few are spared.

On the title page of the suicide note, Mr. Taylor, 39, who has a history of mental illness, writes that anyone who reads it should feel free to contact former counselors "to let them know I finally followed through with my plan."

"To my family starting with you, mother, who I love so much, I know this will probably destroy your life but I've been suffering physically for too long. ... I've been experiencing so many different health problems from the time that I was born till now.

"I've been patient year after year, decade after decade with my health but I decided to end it all."

Police found the signed, undated, hand-printed writings in a backpack in Mr. Taylor's apartment after the shootings, which left three dead and two seriously wounded. The siege was racially motivated, police have charged; Mr. Taylor is black and the victims white.

Mr. Taylor's writings are very legible and include both complete and fragmented sentences, numerous misspellings and grammatical errors.

"I'm sorry, mother, for taking my own life with your gun that I sneaked for the second time in two years.

"Try to understand when a person is physically suffering for a long time ... and I'm treated by racist, biased doctors and nurses who so often give me generic, cheap medication that is ineffective [and] causes return visits to emergency rooms [that] frustration so often sets in. I get fed up with doctors treating black patients differently from whites in terms of unfairness, unequally and like dirt."

Mr. Taylor did not say what his physical ailments were.

In the other writing, which has a title page of "Death to Jerusalem" with drawings of blood dripping from the word "death," Mr. Taylor begins: "As long as the system remains racist white and racist Jew, black people will never overcome.... Poor blacks will remain poor with no hope as God continues to look down on us with complete neglect and no intervention."

And then he begins launching invective — at whites, Jews, Asians, Italians, white police officers, "feds," and "Uncle Tom" blacks.

He gives "a big thumb up — way to go" to both Adolf Hitler and Oklahoma City bomber Timothy McVeigh.

In addition to three homicide charges and other charges related to shootings, Mr. Taylor also is charged with ethnic intimidation under Pennsylvania's hate crime statute.

INS queried on release of criminals

By Jerry Seper
THE WASHINGTON TIMES

Nearly 40 percent of the criminal aliens released from detention by the U.S. Immigration and Naturalization Service over the past five years have been re-arrested, according to the chairman of a Senate subcommittee that controls the INS budget.

"This startling data reveals a disturbing disregard for public safety and serious ongoing management problems at the INS," said Sen. Judd Gregg, New Hampshire Republican and chairman of the Senate Appropriations subcommittee on Commerce, Justice, State and the judiciary.

"By releasing these repeat offenders in such large numbers, the INS has put lives and property at risk, and many innocent people have been victimized as a result," he said. "The INS is not following Congress' direction to keep hard-core criminal aliens incarcerated until deportation."

But INS officials argued yesterday they are following the law and described as "erroneous" Mr. Gregg's accusations that the agency was not concerned about public safety.

"We take very seriously our responsibility to apprehend, detain and remove criminal aliens," said Russ Bergeron, INS director of media relations. "The characterization that we have a disregard for public safety is completely erroneous."

> *"The characterization that we have a disregard for public safety is completely erroneous."*
> —*Russ Bergeron, INS*

Mr. Bergeron noted that the INS releases criminal aliens only after every option has been exhausted. He said many already have served their prison sentences, others have been refused re-entry to their home countries and still others have been ordered released on bond by a federal court.

"They come into our custody because they are not citizens of the United States," he said. "Many are not deportable because their home countries have refused to take them. Others have completed their sentences. The option is to keep them in custody forever."

Mr. Bergeron also noted that the rate of re-arrest among criminal aliens is "not different" than U.S. citizens who are released after serving their time.

"Every case is reviewed, and decisions are made that will as best as possible take into consideration the issue of public safety," he said.

Statistics on the number of releases were made public yesterday by the INS at Mr. Gregg's request following unanswered questions during a budget hearing Tuesday attended by INS Commissioner Doris Meissner.

Mr. Gregg said that of 35,318 criminal aliens released by the INS between 1994 and 1999, a total of 23,295 had FBI arrest records and 8,658 of them were re-arrested for crimes including homicide, assault, rape and drug-related crimes.

"Not surprisingly, the INS data shows that people with criminal records are more likely to commit crimes after they are released," he said. "That is why it is so surprising that the INS allowed over 35,000 criminal aliens to be released from detention in the first place.

"The fundamental question is, why are these criminal aliens being released when deportation is mandatory [for] criminal aliens under the Immigration and Naturalization Act," he said.

Between 1994 and 1999, the INS detained more than 300,000 criminal aliens, later releasing 35,318 of them.

The Washington Times
THURSDAY, MARCH 9, 2000

FAX TRANSMISSION

IMMIGRATION AND NATURALIZATION SERVICE
OFFICE OF CONGRESSIONAL RELATIONS

425 I Street, NW
Washington, DC 20536
202-514-5231
FAX#: 202-514-1117

To: Irene Bueno **Date:**

From: Tim Haugh

Pages:____ including cover sheet

Fax#:
Telephone #:

Subject: Subpoena

Comments: Here's the info that went to the Hill this week, fyi.

U. S. Department of Justice

Immigration and Naturalization Service

Office of Congressional Relations

425 I Street, NW.
Washington, DC 20536

On February 28, the Department of Justice supplied the House Immigration and Claims Subcommittee with information in response to a Subpoena concerning release of criminal aliens. The Subcommittee was provided with criminal histories of 8,658 criminal aliens who were released from Immigration and Naturalization Service (INS) detention and were subsequently arrested for another offense. Additionally, results of a sample of aliens admitted at airports who were inadmissable because of a criminal history and went on to commit another crime after entry in the United States were also transmitted.

Enclosed is a copy of the House Judiciary Subpoena, a 2/25/00 letter to Chairman Hyde regarding the Department's compliance, and the analysis that was delivered with the supporting documents to the Subcommittee.

Please feel free to contact Tim Haugh, INS Congressional Relations, at 305-4771 with any questions.

Thank you.

SCHEDULE A

Subpoena Duces Tecum
Committee on the Judiciary
United States House of Representatives

Serve: The Honorable Janet Reno
Attorney General
U.S. Department of Justice
Tenth Street and Constitution Avenue NW
Washington, DC 20530

The Committee hereby subpoenas certain records. Please provide logs which indicate each record's Bates number, author, description, and source file. If you have any questions, please contact Jim Wilon, Counsel for the Committee's Subcommittee on Immigration and Claims, at (202) 225-5727.

Definitions and Instructions

1. For the purposes of this subpoena, the word "record" or "records" shall include, but shall not be limited to, any and all originals and identical copies of any item whether written, typed, printed, recorded, redacted or unredacted, transcribed, punched, taped, filmed, graphically portrayed, video or audio taped, however produced or reproduced, and includes, but is not limited to, any writing, reproduction, transcription, photograph, or video or audio recording, produced or stored in any fashion, including any and all activity reports, agendas, analyses, announcements, appointment books, briefing materials, bulletins, cables, calendars, card files, computer disks, cover sheets or routing cover sheets, drawings, computer entries, computer printouts, computer tapes, contracts, external and inter correspondence, diagrams, diaries, documents, electronic mail (e-mail), facsimiles, journal entries, letters, manuals, memoranda, messages, minutes, notes, notices, opinions, statements or charts of organization, plans, press releases, recordings, reports, Rolodexes, statements of procedure and policy, studies, summaries, talking points, tapes, telephone bills, telephone logs, telephone message slips, records or evidence of incoming and outgoing telephone calls, telegrams, telexes, transcripts, or any other machine readable material of any sort whether prepared by current or former employees, agents, consultants or by any non-employee without limitation. "Record" or "records" shall also include all other records, documents, data and information of a like and similar nature not listed above.

2. For purposes of this subpoena, the terms "refer" or "relate" and "concerning" as to any given subject means anything that constitutes, contains, embodies, identifies, mentions, deals with, or is in any manner whatsoever pertinent to that subject, including but not limited to records concerning the preparation of other records.

3. This subpoena calls for the production of records, documents and compilations of data and information that are currently in your possession, care, custody or control, including, but not limited to, all records which you have in your physical possession as well as any records to which you have access, any records which were formerly in your possession, or which you have put in storage or anyone has put in storage on your behalf. Unless a time period is specifically identified, the subpoena includes all documents to the present.

4. The conjunctions "or" and "and" are to be read interchangeably in the manner that gives this subpoena the broadest reading.

5. No records, documents, data or information called for by this subpoena shall be destroyed, modified, redacted, removed or otherwise made inaccessible to the Committee.

6. If you have knowledge that any subpoenaed record, document, data or information has been destroyed, discarded or lost, identify the subpoenaed records, documents data or information and provide an explanation of the destruction, discarding, loss, deposit or disposal.

7. When invoking a privilege or any other reason as a ground for withholding any responsive record, document, data or information, list each record, document, compilation of data or information by date, type, addressee, author (and if different, the preparer and signatory), general subject matter, and indicated or known circulation. Also, indicate the privilege or reason asserted with respect to each record, document, compilation of data or information in sufficient detail to ascertain the validity of the claim of privilege or other reason.

8. This subpoena is continuing in nature. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date shall be provided immediately upon location or discovery subsequent thereto.

9. Please provide a printed and, where possible, an electronic version of records. Electronic information may be stored on 3½ inch diskettes in ASCII format. In addition, please provide the Committee's Minority staff with an identical copy of all records provided.

<u>Subpoenaed Items</u>

1. Please provide the Committee with all records relating to inadmissible or deportable criminal aliens who, during the past five years, were released from Immigration and Naturalization Service detention or custody and then subsequently <u>convicted</u> of additional crimes committed in the United States. Such records shall include, but shall not be limited to, records identifying such criminal aliens and setting out their histories of criminal activity and interaction with the Immigration and Naturalizati Service.

2. Please provide the Committee with all records relating to the two currently overdue semi-annual reports on detention and release of criminal aliens that were required to be transmitted to Congress by section 386(b) of the Illegal Immigration Reform and Immigrant Responsibility Act, by September 1998 and March 1999, respectively, but that were never transmitted to Congress. Such records shall include, but shall not be limited to, records relating to research, development, consideration, and drafting of the two overdue reports.

Opening Statement of
The Honorable Lamar Smith, Chairman
Subcommittee on Immigration and Claims
House Committee on the Judiciary
Business Meeting to Vote on Subpoenas Regarding Deportable Criminal Aliens Released by INS Who Commit Additional Crimes in the U.S.
August 4, 1999

The Angel Maturino Resendez case held a magnifying glass up to Justice Department failures to deport criminal aliens. Close inspection revealed that an accused serial killer had slipped through the INS's hands. Resendez is just one of many felons released and accused of additional crimes committed in our neighborhoods.

A Houston television station reported yesterday that Guillermo Castillo, an illegal alien charged with capital murder in the beating death of a Houston man, was allowed to go free twice by the INS.

"That was a mistake, yes sir," INS agent Mike McMahon is quoted as saying about the first release.

Later, Castillo was allowed to go free again because "the warrant did not appear in the INS computer system."

How many other "mistakes" like Castillo and Resendez are walking our streets every day, committing more crimes?

The Justice Department's own statistics show that a quarter of all federal prisoners are criminal aliens, and that most convicted criminals go on to commit additional crimes. Because most criminal aliens are deportable, it is the INS' job to remove them from the United States before they harm anyone else.

Two recent studies done by the U.S. General Accounting Office concluded that the INS releases thousands of deportable criminal aliens into our neighborhoods and communities rather than deporting them to their native countries. In just one small random sample, the GAO was able to identify fifteen criminal aliens who were convicted of additional crimes after being improperly released by the INS.

The INS' most recent semi-annual report on INS detention facilities, in May 1998, stated that the agency released 1,800 criminal aliens during a six-month period. Roughly 1,300 of those aliens were aggravated felons.

During the past year the INS has failed to provide two Congressionally mandated reports on the release from INS detention of criminal aliens; those reports were due in September 1998 and March 1999. This failure to provide key information on such a crucial subject is inexcusable.

To address this problem I sent a formal inquiry to the Attorney General on July 14, requesting detailed information on inadmissible or deportable criminal aliens who were released from INS custody and then subsequently convicted of additional crimes committed in the United States. The letter requested information identifying all such criminal aliens and their history of criminal activity.

The Attorney General failed to respond in a timely or responsive manner. The Subcommittee received no response or communication at all before the deadline of July 31 had passed, despite the fact that Subcommittee staff contacted the Justice Department to remind them of my inquiry and check on the progress of their response.

Only when the Subcommittee contacted the Justice Department to notify them that the Subcommittee would subpoena information did the Justice Department promise a response. It was a brief and inadequate letter that failed to address questions and concerns raised.

The Justice Department tried to claim that it simply does not have any of the information requested. That is false. The Justice Department can use FBI records to check on subsequent criminal activity of the more than 25,000 criminal aliens released from INS detention since 1995.

The Department's subsequent offer to provide some materials still does not provide the full accounting of crimes committed by released criminal aliens that the public deserves.

This lack of response was no surprise.

Promises of future action ring hollow with Congress. We received promises that the Administration was handling problems with criminal background screenings during Citizenship USA in 1996. We have since learned that thousands of individuals with disqualifying records were made citizens.

It is simply unacceptable for the Justice Department, which is charged with protecting the safety of the American people, to release deportable criminal aliens who then continue to terrorize our communities and neighborhoods. And there is no excuse for withholding crucial information from Congress and the American people.

Today the Subcommittee will consider a subpoena to compel the Justice Department to deliver the information requested. The subpoena requires production of specific information regarding criminal aliens who were released by the INS and who subsequently committed additional crimes in the United States.

The subpoena also requires production of the two Congressionally mandated reports on release of criminals from detention that the INS, in violation of law, has failed to transmit to Congress. And it provides the Justice Department with a generous three weeks to produce this information.

The intent of this subpoena is to gather information so we can enforce our laws and protect the American people.

Contact: Allen Kay
202-225-4236 (H)
202-225-2659 (cell)
301-990-3749 (H)

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

February 25, 2000

The Honorable Henry J. Hyde
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This is in response to your February 9 letter regarding U.S. Department of Justice (Department) compliance with the House Judiciary Committee's (Committee) Subpoena dated August 4, 1999. This letter of reply will apprise you of the status of our compliance.

The Department has complied fully with the second requirement of the Subpoena to provide all records relating to the two reports on detention and release of criminal aliens (Section 386 Report). Below are the details on what the Department will provide to the Committee. We are making every possible effort to provide these materials by February 28, and expect that we will be able to meet that timeframe.

Criminal Aliens Released from Detention

Per the requirements of the Subpoena, the Department will provide the following information about those criminal aliens who committed crimes subsequent to their release from Immigration and Naturalization Service (INS) detention.[1]

First, per the Committee's request, for those recidivist criminal aliens whose subsequent criminal records indicate a conviction, we will provide unredacted records ("rap sheets") that

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[1] It is our understanding that the General Accounting Office has reviewed and approved statistical sampling methodology and techniques.

show arrests and convictions for criminal activity occurring after release.

Second, for those aliens with a Federal Bureau of Investigation (FBI) number but for whom we do not have known dispositions of their cases, we will provide to Congress the known information regarding each individual alien's post-release criminal record. We, however, will redact personal identifiers that may be accessed through a public system, including name, alias(es), Social Security number, street addresses, court docket numbers, alien registration numbers (A-numbers), and agency case numbers. This methodology is consistent with redactions performed in connection with the Citizenship USA Subpoena. The FBI numbers will remain unredacted on the rap sheets as a means for the Department to track anonymously the information shared with Congress. In addition, the Department will ~~take~~ a sample of the cases with no known disposition and forward them to INS field personnel for determination of their exact dispositions. The Department will report to the Committee on the type and number of dispositions from the sample.

For all recidivists, we will provide a summary report for each alien from the Deportable Alien Control System (DACS) detailing INS interaction with the alien. In addition, a database containing A-number, name, date of birth, date of release from INS detention, nationality, original crime (NCIC code), type of release, gender, Docket Control Office, FBI number, date and location of post release arrest, disposition (if available), and type of arrest (NCIC code) will also be supplied. The name and A-number for those individuals for whom we do not have a disposition will be redacted in accordance with the procedures outlined previously.

It was agreed to with the Committee staff that the Department would stipulate that the population of criminal aliens without FBI numbers is similar to the population with FBI numbers in terms of the rate of recidivism.

<u>Air passengers</u>

The Committee requested an analysis of non-United States citizen passengers who arrived in Fiscal Year 1996, Fiscal Year 1997, and Fiscal Year 1998. The Department strongly believes that such an analysis will reveal that only a very small percentage of these arrivals are inadmissible or deportable criminal aliens who, after INS inspection, are subsequently convicted of additional crimes committed in the U.S. The Department will provide the Committee an analysis of Fiscal Year 1998 data. Based on the results and the Committee's review, the Department is willing to provide analysis of Fiscal Year 1996 and 1997 data, if it is determined that this data is useful to the Committee.

For the Fiscal Year 1998 analysis, the Department will run a random sample of 10,000 non-U.S. citizens from the U.S. Customs Services' database containing approximately 19 million passenger names. The Department will submit the sample to the FBI to conduct name-based and date of birth-based searches of criminal records. The Department of Justice will only submit to Congress those criminal alien cases in the sample where an exact name and date of birth match occurred. The Department will present to the Committee unredacted rap sheets for those cases containing criminal arrests and convictions both before entry and post entry. For those cases with no disposition, the Department will provide redacted rap sheets omitting the personal identifiers accessible by a public system. In addition, a summary report from DACS will be provided for each alien. This information will be presented to the Committee along with an analysis of the sample of non-disposition and known disposition cases. Again, we are making every effort to provide this information by February 28.

Border Crossings

The Department cannot supply the information the Committee requested in the letter of February 9 regarding illegal border crossers. To do so would require the Department to redirect critical law enforcement resources to provide this information in a timely fashion.

The FBI's Integrated Automated Fingerprint Identification System (IAFIS) is currently distributed among FBI, federal, and state users on a first-come, first-served basis. Cases associated with these latent fingerprint identifications include mail and insurance fraud, sexual assault, extortion, armed robbery, organized crime, and theft of government property. More significantly, other latent fingerprint identifications include cases involving homicides, bombings, sabotage, assassination, consumer product tampering, and weapons of mass destruction. Use of the IAFIS latent search capability in cases of this type provides an incalculable contribution toward minimizing loss of life and property.

The process of preparing fingerprints for an IAFIS latent search (called "latent encoding") requires 1-2 hours of labor by a latent examiner for each INS IDENT (Automated Biometric Identification System) fingerprint. The IAFIS latent search itself requires 1-2 hours to process. While the computer capacity exists for IAFIS to accept and process additional latent searches, latent fingerprint examiner resources required to encode them are quite scarce. All available latent examiner resources are being fully utilized in support of these search requests. Use of FBI latent fingerprint examiners to perform latent searches in connection with the Subpoena would significantly reduce or completely remove their availability for law enforcement service. This would lengthen the time required to process pending latent searches, increase the potential that criminals would remain at large until positively identified, and lengthen the time required to solve open cases.

In an effort to supply the Committee with information relating to illegal border crossers, we can supply the Committee with results of a joint INS-FBI criminality study when completed. In the FY 2000 Conference Report on the Commerce, Justice, State Appropriations bill, Congress directed the Department of Justice to develop a plan to integrate the INS' IDENT and the FBI's Integrated Automated Fingerprint Identification System (IAFIS). In support of this effort, Congress further directed that several studies be undertaken, including a joint INS-FBI criminality study, involving matching IDENT recidivist records against records contained on the FBI Criminal Master File. The purpose of this criminality study is to determine the criminal incident rate of individuals for whom records exist in the INS IDENT recidivist database who also have records of prior criminal histories and outstanding wants and warrants in the FBI Criminal Master File. Fingerprints would be matched using an automated system rather than the personnel intensive latent method described above. While the initiative is underway, it will take some time for the technical issues to be resolved.

Although the study is focused on criminality prior to INS apprehension, an initial sample of up to 1,000 records could be analyzed to determine rates of criminal activity subsequent to

INS apprehension. The sample is expected to be completed in June 2000. The full study examining only prior criminality is expected to be complete in late 2000.

In conclusion, the Department continues to strive toward fulfilling its charge by February 28. In the meantime, if the Department can be of further assistance, please do not hesitate to contact my office.

Sincerely,

Robert Raben

Robert Raben
Assistant Attorney General

February 28, 2000

Immigration and Naturalization Service Results of House Judiciary Committee Subpoena on Criminal Aliens Released from Detention

The Department of Justice has gathered and analyzed the immigration and criminal records of certain groups of aliens in connection to a subpoena from the Committee on the Judiciary. The first group of these records relates to criminal aliens that were released from Immigration and Naturalization Service (INS) detention and either returned to the community or given an order of voluntary departure. The second group of records relates to aliens that were admitted to the United States through primary inspection at an airport.

Recidivism is one of the most serious problems in law enforcement. This exercise resulted in a 37% rate of recidivism for criminal aliens released from INS custody. While the rate varies greatly for specific populations, the findings from this project are in keeping with general recidivism rates. The INS release criteria attempt to minimize this risk whenever possible. The INS has increased detention capacity greatly over the last five years and focused efforts on removing criminal aliens and border enforcement. To this end, the INS removed approximately 245,000 criminal aliens between October 1994 and May 1999. In addition, we are attempting to maximize the amount and quality of information that an officer on the ground has to make a determination with regard to release, including through IDENT/IAFIS interconnectivity.

The Department's response to this subpoena relied heavily on the Immigration and Naturalization Service and the Federal Bureau of Investigation (FBI). The INS worked with the Bureau of the Census to develop methodologies for answering questions raised by the subpoena; the methodologies were reviewed and approved by the General Accounting Office. The U.S. Customs Service assisted with data for the airport admissions.

Aliens released from detention

Between October 1, 1994 and May 31, 1999 the INS had over 300,00 criminal aliens in detention. During this period the INS released 35,318 criminal aliens from custody. The Department and INS place the highest value on protecting public safety. Criminal aliens may be released under several conditions; including after an immigration judge sets bond for an alien or orders release on recognizance or supervision, after review of the case by INS indicates that the alien is not a flight risk or danger to the community and the detention space is needed for more serious criminals, on an order of voluntary departure, or because an immigration judge granted some form of relief to the alien or terminated the proceedings against the alien.

A search of INS databases indicated that the INS had FBI numbers, indicating an arrest history, on 23,295 of the released aliens. The INS did not have FBI numbers on the remaining 12,023 aliens. The FBI produced criminal histories (rap sheets) on the aliens with FBI numbers who had an update on their rap sheet after the date of release from INS detention. Those 18,454 histories were reviewed by INS investigative officers who determined that 8,658 aliens were arrested for a crime after release from INS detention. The officers checked the histories for the disposition of the most serious subsequent crime. As agreed with the Committee, those crimes and dispositions have been classified into the discrete categories of violent crimes, drug-related crimes, and non-violent crimes. Violent crimes include homicide, assault, sexual assault, kidnapping, and robbery. The criminal histories often do not distinguish between levels of a crime, e.g., between homicide and attempted homicide. Assault includes crimes ranging from simple assault to aggravated assault with a deadly weapon.

The following table summarizes the type of crime and the disposition of the case if known. Only the most serious crime is included in this table; some aliens had multiple charges or arrests on multiple dates.

	Total	nonviolent	drug	violent
Total arrests	8,658	4,412	2,870	1,376
convicted	4,264	2,270	1,489	505
no disposition	4,394	2,142	1,381	871

Since a large proportion of the rap sheets provided by the FBI did not include information on the disposition of the case, INS agreed to draw a random sample of 116 of the cases without a known disposition. The purpose of the sample was to develop an estimate of the number of convictions. The INS officers traced the records of the sampled cases to determine disposition. The results indicated 72 cases with convictions, 24 cases still pending and 20 cases with dismissals, nolle pros, or acquittal. Therefore an estimate of the number of convictions among the cases without disposition is 2,709 plus/minus 379. The estimate of cases still pending is 903 plus/minus 318.

The arrest rate among the 23,295 aliens for whom the Department had FBI criminal histories is 37.2 percent. The number of convictions (including the estimate from the sample) is 6,973 plus/minus 379. The rate of arrest and conviction among the 23,295 aliens is 30 percent plus/minus 1.6 percent.

There is considerably less information about the 12,023 aliens for whom the INS did not have FBI numbers. The INS drew a random sample of 400 cases from the records of these aliens. That sample was investigated by the INS' Law Enforcement Support Center (LESC). Using name and date of birth checks, the LESC found 67 possibly responsive records; an arrest rate of 16.8 percent plus/minus 3.6 percent. However, the Department believes that this lower arrest rate is attributable to the uncertainty and difficulty in using only name and date of birth checks with this population. Therefore, the Department believes that the arrest and conviction rates among these aliens is the same as the rates among those aliens that had FBI numbers.

The INS compiled the records of subsequent actions taken by the INS after the initial release from detention. Of the 8,658 aliens who were arrested after release, 3,396 were removed from the United States at least once and there were a total of 4,646 removals among these aliens indicating multiple removals of some aliens (2,767 aliens were first removed after the arrest and 629 aliens were removed before the arrest and had illegally reentered the United States).

Aliens admitted through primary inspection at airports

The INS worked with the Customs Service to develop a list of the approximately 19 million aliens admitted through airports in FY 1998. The list contained information on name, date of birth, and date of entry. Because the list was too large to investigate every admission, the Department and the Committee agreed that an exploratory sample of the admissions would be investigated. The INS drew a simple random sample of 10,000 aliens. The names and dates of birth of these aliens were processed by the FBI using a "sounds-alike" system for determining name matches. After eliminating records that did not match the name and date of birth exactly, the INS determined that 4 aliens among the 10,000 had a criminal history with convictions before and after entry.

The small number of ineligible admissions uncovered by this sample indicates that a more complex sampling strategy would be needed to obtain an estimate for the entire population of admissions with a reasonable level of precision. The samples would need to be larger and they will need to be executed over long periods of time.

INS halts ID system for criminal aliens after Hill pressure

By August Gribbin
THE WASHINGTON TIMES

Immigration and Naturalization Service officials have been ordered to stop expanding their once-vaunted computer system for spotting criminal aliens.

The INS has been directed instead to produce a plan for fixing what congressmen claim are "the inadequacies of this system."

Following the immigration service's repeated failure to nab accused serial killer Angel Maturino Resendiz, members of the House Appropriations Committee earlier this month turned down the $20 million INS bid for funding further deployment of its fingerprint system.

Mr. Resendiz, who was linked to nine murders, made the FBI's Ten Most Wanted List and subsequently turned himself in. He had illegally entered the United States at least nine times, and each time he was allowed to return to Mexico voluntarily.

Rep. Harold Rogers, Kentucky Republican, called the INS handling of the Resendiz case "deplorable." He said he was "astounded by what appears to be another act of sheer INS incompetence."

Mr. Rogers is an Appropriations Committee member and chairs the subcommittee that regulates INS funding.

The appropriations committee also directed agency officials to present by Sept. 30 a plan for linking the INS system, called IDENT, with the FBI's Integrated Automated Fingerprint Identification System.

The House move coincides with the recently expressed intent of their Senate colleagues. Members of the Senate Appropriations Committee wrote a similar demand into their INS funding bill. Consequently, the order for the INS to fix IDENT is expected to become law.

Aides to Sens. Spencer Abraham, Michigan Republican, Jon Kyl, Arizona Republican, and Charles E. Schumer, New York Democrat, this week said the senators intend to pursue questions about the INS computer problems when they return to Capitol Hill after Labor Day.

The legislators see the computer system as an important security tool that should alert INS agents to the attempted entry of terrorists, spies and criminals.

So far, INS has spent $85 million and most of the decade trying to implement IDENT. The system is designed to check names, photos, and fingerprints obtained at workstations in INS facilities against INS files containing the same data on millions of persons previously processed by INS or by other law enforcement agencies.

Thus it is supposed to identify criminal aliens. It also is supposed to authenticate benefit claims, test the genuineness of identification cards, show if persons seeking entry have ever entered the country illegally and verify quickly the identities of persons seeking benefits.

The immigration service boasted the system would speed booking of arrests, improve use of detention facilities for alien crooks, detect probable smugglers of drugs and immigrants, analyze the flow of aliens across the border, help state and local law enforcement agencies quickly and accurately spot alien law breakers, and, among other things, reduce fraud.

A vital IDENT virtue is its speed. Inspectors, border patrol agents and others confronting lines of visitors and immigrants must get answers to identity checks within minutes.

Thus the system makes its fingerprint matches by scanning and comparing the print of just one finger against a filed, one-finger print in its database.

The FBI's system requires comparing prints from all 10 fingers. That can take hours. But it provides greater accuracy — necessary for both the FBI and INS.

The INS promised three years ago to incorporate the "10-finger system" into IDENT. But as the Justice Department's inspector general has reported, "Limited progress has been made in integrating 10-print fingerprint technology into the numerous INS programs."

The Washington Times

FRIDAY, AUGUST 27, 1999

U.S. DEPARTMENT OF JUSTICE
OFFICE OF PUBLIC AFFAIRS

IMPORTANT INFORMATION

ATTENTION: Irene Bueno

DATE: Aug 5, 1999

OF: DPC

SUBJ:

FAX #: 456-5581

PAGES: 2

FROM: Michelle Bishop

PHONE: (202) 616-2777

FAX: (202) 514-5331

Per Carole Florman, attached are DOT Q: A's regarding the Lamar Smith Subpoenas.

NOTE: *If you are not the intended receiver written above, please do not read the contents of this facsimile, for it may contain confidential information. Please call immediately and inform the sender. We are sorry for the inconvenience.*

Please call (202) 514-2008 if there is a problem with the transmission.

Lamar Smith Subpoenas

Q: Congressman Lamar Smith asked the House Immigration subcommittee to subpoena all DOJ records relating to criminal aliens released by the INS within the past five years, who later went on to commit additional crimes. Do you have that information? Why didn't you give it to him before he subpoenaed it?

A: DOJ does not have much of the information that the Subcommittee is seeking. As you all know, INS does release criminal aliens from detention, as authorized by statute, after a determination that individual is not a flight risk or a danger to the community, or such release is ordered by an Immigration Judge. While INS does track the numbers of people with criminal records who are released from INS custody, it does not have a system to capture subsequent criminal activity of those individuals.

DOJ and INS will, of course, work with the Committee to respond to their legitimate oversight needs. INS has offered to run a statistically valid sample of approximately 2,000 persons through the NCIC to determine whether those individuals have subsequently committed criminal activity. *[NOTE: INS has released nearly 27,000 aliens with criminal convictions between October 1994 and May 1999. The only means of determining whether these individuals have committed crimes subsequent to their release is to check each name through the FBI's NCIC system. This process would take months to complete. They would also have to verify the identity of each hit against the NCIC to ensure that they are the same person.]*

Leanne A. Shimabukuro 08/04/99 08:44:50 PM

Record Type: Record

To: Jose Cerda III/OPD/EOP@EOP, Irene Bueno/OPD/EOP@EOP

cc:
Subject: criminal aliens

Reno Subpoenaed for Alien Records

By Cassandra Burrell
Associated Press Writer
Wednesday, August 4, 1999; 5:25 p.m. EDT

WASHINGTON (AP) -- A House subcommittee voted Wednesday to subpoena Attorney General Janet Reno for information on immigrants with criminal records who go on to commit more offenses after being released from custody.

Republicans angry over the Immigration and Naturalization Service's release of a Mexican drifter suspected in nine killings voted 6-1 to issue a subpoena after Rep. Lamar Smith said he never received data he requested from Reno in mid-July.

``The attorney general failed to respond in a timely or responsive manner," Smith, R-Texas, said. ``There is no excuse for withholding crucial information from Congress and the American people."

Smith, chairman of the House Judiciary Committee's immigration subcommittee, said he was not satisfied by a two-page letter the Justice Department sent in response to his request.

In the letter Monday, Acting Assistant Attorney General Jon P. Jennings said a total of 26,870 criminal immigrants had been released from custody for various reasons in the five-year period ending May 31. But the department had no information on those who committed additional crimes.

``However, many of the aliens who commit crimes are encountered by the INS following their release and are dealt with appropriately as a result of referrals received from state and local law enforcement channels," Jennings' letter said.

Smith said he didn't believe that no other information was available.

The subpoena gives Reno three weeks to turn over ``all records relating to inadmissible or deportable criminal aliens who, during the past five years, were released from Immigration and Naturalization Service detention and subsequently convicted of additional crimes committed in the United

States."

The subpoena was signed by House Judiciary Committee Chairman Henry Hyde, R-Ill., later in the day, Smith spokesman Alan Kay said.

The INS recently came under fire for allowing Angel Maturino Resendez, suspected to be the ``railroad killer," to slip repeatedly through its fingers.

Some Republicans have bitterly complained about the INS for years, accusing it of fiscal mismanagement, allowing the Southwest border of the United States to become a ``sieve" where illegal immigrants cross at will, and of bungling the citizenship process, forcing applicants to wait for years to be sworn in as Americans.

Back to the top

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General Washington, D.C. 20530

FAX COVER SHEET

DATE: 8/5/99

TO: Irene Bueno

PHONE NO.

FAX NO. 456-5581

FROM: PATTY FIRST

PHONE NO.: 202/514-4810

FAX NO. 202/514-9149

NO. OF PAGES: (EXCLUDING COVER)

COMMENTS:

Subpena Duces Tecum

By Authority of the House of Representatives of the Congress of the United States of America

To the Honorable Janet Reno, Attorney General, U.S. Department of Justice

You are hereby commanded to produce the things identified on the attached schedule before the Sub. Committee on Immigration & Claims of the Committee on the Judiciary of the House of Representatives of the United States, of which the Hon. Henry J. Hyde is chairman, by producing such things in Room B-370B of the Rayburn Building, in the city of Washington, on August 25, 1999, at the hour of 5:00 p.m.

To United States Marshals or any Judiciary Committee staff member to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 4th day of August, 1999

Henry J. Hyde
Chairman.

Attest:

Jeff Trandahl
Clerk.
by Martha C. Morrison
Deputy Clerk

AUG-05-1999 09:37 P.03/10

Subpena for Attorney General Janet Reno

U.S. Department of Justice

Tenth Street and Constitution Ave., NW

Washington, D.C. 20530

before the Committee on the Judiciary

Served

106th Congress, 1st Session

House of Representatives

SCHEDULE A

Subpoena Duces Tecum
Committee on the Judiciary
United States House of Representatives

Serve: The Honorable Janet Reno
Attorney General
U.S. Department of Justice
Tenth Street and Constitution Avenue NW
Washington, DC 20530

The Committee hereby subpoenas certain records. Please provide logs which indicate each record's Bates number, author, description, and source file. If you have any questions, please contact Jim Wilon, Counsel for the Committee's Subcommittee on Immigration and Claims, at (202) 225-5727.

Definitions and Instructions

1. For the purposes of this subpoena, the word "record" or "records" shall include, but shall not be limited to, any and all originals and identical copies of any item whether written, typed, printed, recorded, redacted or unredacted, transcribed, punched, taped, filmed, graphically portrayed, video or audio taped, however produced or reproduced, and includes, but is not limited to, any writing, reproduction, transcription, photograph, or video or audio recording, produced or stored in any fashion, including any and all activity reports, agendas, analyses, announcements, appointment books, briefing materials, bulletins, cables, calendars, card files, computer disks, cover sheets or routing cover sheets, drawings, computer entries, computer printouts, computer tapes, contracts, external and internal correspondence, diagrams, diaries, documents, electronic mail (e-mail), facsimiles, journal entries, letters, manuals, memoranda, messages, minutes, notes, notices, opinions, statements or charts of organization, plans, press releases, recordings, reports, Rolodexes, statements of procedure and policy, studies, summaries, talking points, tapes, telephone bills, telephone logs, telephone message slips, records or evidence of incoming and outgoing telephone calls, telegrams, telexes, transcripts, or any other machine readable material of any sort whether prepared by current or former employees, agents, consultants or by any non-employee without limitation. "Record" or "records" shall also include all other records, documents, data and information of a like and similar nature not listed above.

2. For purposes of this subpoena, the terms "refer" or "relate" and "concerning" as to any given subject means anything that constitutes, contains, embodies, identifies, mentions, deals with, or is in any manner whatsoever pertinent to that subject, including but not limited to records concerning the preparation of other records.

3. This subpoena calls for the production of records, documents and compilations of data and information that are currently in your possession, care, custody or control, including, but not limited to, all records which you have in your physical possession as well as any records to which you have access, any records which were formerly in your possession, or which you have put in storage or anyone has put in storage on your behalf. Unless a time period is specifically identified, the subpoena includes all documents to the present.

4. The conjunctions "or" and "and" are to be read interchangeably in the manner that gives this subpoena the broadest reading.

5. No records, documents, data or information called for by this subpoena shall be destroyed, modified, redacted, removed or otherwise made inaccessible to the Committee.

6. If you have knowledge that any subpoenaed record, document, data or information has been destroyed, discarded or lost, identify the subpoenaed records, documents data or information and provide an explanation of the destruction, discarding, loss, deposit or disposal.

7. When invoking a privilege or any other reason as a ground for withholding any responsive record, document, data or information, list each record, document, compilation of data or information by date, type, addressee, author (and if different, the preparer and signatory), general subject matter, and indicated or known circulation. Also, indicate the privilege or reason asserted with respect to each record, document, compilation of data or information in sufficient detail to ascertain the validity of the claim of privilege or other reason.

8. This subpoena is continuing in nature. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date shall be provided immediately upon location or discovery subsequent thereto.

9. Please provide a printed and, where possible, an electronic version of records. Electronic information may be stored on 3½ inch diskettes in ASCII format. In addition, please provide the Committee's Minority staff with an identical copy of all records provided.

<u>Subpoenaed Items</u>

1. Please provide the Committee with all records relating to inadmissible or deportable criminal aliens who, during the past five years, were released from Immigration and Naturalization Service detention or custody and then subsequently convicted of additional crimes committed in the United States. Such records shall include, but shall not be limited to, records identifying such criminal aliens and setting out their histories of criminal activity and interaction with the Immigration and Naturalization Service.

2. Please provide the Committee with all records relating to the two currently overdue semi-annual reports on detention and release of criminal aliens that were required to be transmitted to Congress by section 386(b) of the Illegal Immigration Reform and Immigrant Responsibility Act, by September 1998 and March 1999, respectively, but that were never transmitted to Congress. Such records shall include, but shall not be limited to, records relating to research, development, consideration, and drafting of the two overdue reports.

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General Washington, D.C. 20530

August 2, 1999

The Honorable Lamar Smith
Chairman, Subcommittee on Immigration
and Claims
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Thank you for your July 14, 1999, letter regarding the release of criminal detainees from the custody of the Immigration and Naturalization Service (INS) and the sharing of criminal histories and data among Federal law enforcement agencies.

The decision to release a criminal detainee is not taken lightly by the INS. In all instances where such a decision is required, a number of factors must be considered. Of utmost consideration is whether the detainee poses a serious risk or threat to the community. Authority to release criminal aliens lies with the INS as well as the Executive Office for Immigration Review (EOIR). Pursuant to this authority, the EOIR may issue an order for change in custody conditions or for the release of a detainee from INS custody.

As you may know from information previously provided by the INS, there is a growing population of INS detainees whose removal is not possible. This is due to the absence of formal diplomatic relations with the detainees' countries of origin. Under current law, the INS must consider release of these detainees. In some instances, detainees with a criminal history may be released; however, detainees who possess a history of violence or who pose a threat to the community will not be released.

The circumstances under which INS would normally release aliens who are not subject to mandatory detention can be found in 8 CFR 236.1(c)(2) and in the Immigration and Nationality Act Sec. 236(a). It includes the release of the following: unaccompanied juveniles into the custody of either family members or legal guardians, family units, individuals released for humanitarian reasons, asylum seekers in expedited removal who have been determined to have a credible fear of persecution, non-criminal or petty criminals who have been determined not to be a risk to public safety or a risk of flight, or individuals ordered released by an Immigration Judge.

The following data represents the number of criminal aliens who have been released by the INS within the past 5 years:

Fiscal Year 1995, 5,300
Fiscal Year 1996, 4,800
Fiscal Year 1997, 6,454
Fiscal Year 1998, 7,247
Fiscal Year 1999, 3,069 through May 31.

We are unable to provide information regarding the number of criminal aliens who have committed crimes following their release from INS custody. Most of these crimes are prosecuted by local law enforcement agencies, and no means exist to capture this information. However, many of the aliens who commit crimes are encountered by the INS following their release, and are dealt with appropriately as a result of referrals received from state and local law enforcement channels or through the INS Institutional Removal Process.

Please be assured that the Department of Justice and the INS are committed to the enforcement of our immigration laws in an effort to promote safe communities. If you have further questions regarding this or any other matter, please feel free to contact my office.

Sincerely,

Jon P. Jennings

Jon P. Jennings
Acting Assistant Attorney General

ONE HUNDRED SIXTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6216
(202) 225-3951
http://www.house.gov/judiciary

July 14, 1999

The Honorable Janet Reno
Attorney General
Department of Justice
10th St. & Constitution Ave. NW
Washington, DC 20530

<u>Re: Criminal Aliens Released by INS</u>

Dear Attorney General Reno:

The case of accused serial killer Raphael Resendez-Ramirez has spotlighted the serious and longstanding problem of the Immigration and Naturalization Service's releasing from custody dangerous criminal aliens who then commit additional crimes. The threat to public safety created by this unjustified and continuing failure of a federal law enforcement agency should not be tolerated.

The INS' most recent report on INS detention facilities stated that the agency released 1,800 criminal aliens during a six-month period. Roughly 1,300 of those aliens were aggravated felons.[1] Two recent studies done by the U.S. General Accounting Office concluded that the INS releases thousands of deportable criminal aliens into American neighborhoods and communities rather than deporting them to their native countries. In just one small random sample, the GAO was able to identify fifteen criminal aliens who were convicted of additional crimes after being improperly released by INS.

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[1]The latest report was dated May 7, 1998. The INS and Justice Department have inexplicably failed to provide Congress with the two subsequent Congressionally mandated reports that were due in October 1998 and May 1999, respectively, so Congress and the American people have no way of knowing how many more criminals INS has released from its detention facilities since then.

The problem goes well beyond INS detention facilities. Criminal aliens like Resendez-Ramirez are released by Border Patrol agents who do not have access to FBI databases because their computer systems are incompatible. Also, the FBI refuses to provide criminal history data for immigration screening purposes. The same problem is encountered by INS airport inspectors at international airports.

Please provide me, by July 31, 1999, detailed information regarding inadmissible or deportable criminal aliens who, during the past five years, were released from INS custody and then subsequently convicted of additional crimes committed in the United States. Please provide detailed information identifying all such criminal aliens and setting out their histories of criminal activity and interaction with the INS.

To the extent that such information is not kept by the Justice Department in a comprehensive or systematic manner, please explain why this is so and what is being done to remedy this omission.

Thank you for your attention to my request.

Sincerely,

Lamar Smith

Lamar Smith
Chairman
Subcommittee on Immigration and Claims