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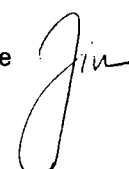
**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001**

Thursday, October 16, 1997

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: James J. Jukes (for) Assistant Director for Legislative Reference

OMB CONTACT: Ingrid M. Schroeder 
PHONE: (202)395-3883 FAX: (202)395-3109

SUBJECT: **JUSTICE and STATE Report on Use and Effectiveness of the Prisoner Transfer Treaties**

DEADLINE: **Noon Friday, October 24, 1997**

In accordance with ~~OMB Circular A-19~~, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. **Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.**

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LRM ID: IMS174 **SUBJECT:** JUSTICE and STATE Report on Use and Effectiveness of the Prisoner Transfer Treaties

**RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM**

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

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The following is the reponse of our agency to your request for views on the above-captioned subject:

_____ Concur

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_____ See proposed edits on pages _____

_____ Other: _____

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U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

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

Dear Mr. Chairman:

As required by Section 331(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), the Attorney General on behalf of the Department of Justice and the Department of State, is this day submitting a joint report to Congress focusing on the prisoner transfer treaties to which the United States is a party with the three countries with the greatest number of nationals incarcerated in the United States (that is to say, Mexico, Canada, and the United Kingdom). The report addresses the use and effectiveness of our treaties with these three countries in removing from the United States their incarcerated foreign nationals. Enclosed is a copy of this report.

In brief, the report, which was prepared by the Department of Justice with the assistance of the Department of State and certain state government agencies, explains the operation of prisoner transfer treaties between the United States and its three major treaty partners, named above. As requested in Subsections 331(b) and (c) of the IIRIRA, the attached report discusses the various factors involved in the use of the treaties, as well as the recommendations of the affected federal and state agencies to increase the effectiveness and use of, as well as compliance with, the treaties.

As highlighted in the attached report, the prisoner transfer treaties that were studied require that the decision to transfer a prisoner, or to accept the transfer of a prisoner, be predicated on a number of factors and be subject to certain conditions. These factors and conditions necessarily limit any prisoner's ability to transfer, but they also limit the authority

The Honorable Henry J. Hyde
Page 2

of the incarcerating country to initiate the transfer. In that regard, the report addresses the efforts that may be necessary to revise the subject treaties to delete or otherwise modify the requirements that limit our current efforts to transfer foreign nationals out of federal and state prisons in this country.

Please do not hesitate to contact this office if the Department of Justice can be of further assistance with regard to this or any other matter.

Sincerely,

Andrew Fois
Assistant Attorney General

Enclosures

**REPORT OF THE SECRETARY OF STATE
AND THE ATTORNEY GENERAL
ON THE USE AND EFFECTIVENESS OF THE
PRISONER TRANSFER TREATIES WITH THE
THREE COUNTRIES WITH THE GREATEST
NUMBER OF NATIONALS INCARCERATED
IN THE UNITED STATES
(MEXICO, CANADA, THE UNITED KINGDOM)**

**REQUIRED BY SECTION 331 OF THE
ILLEGAL IMMIGRATION REFORM AND
IMMIGRANT RESPONSIBILITY ACT
OF 1996**

**SUBMITTED TO
THE COMMITTEES ON THE JUDICIARY
OF THE UNITED STATES SENATE
AND HOUSE OF REPRESENTATIVES**

I. INTRODUCTION

On September 30, 1996, President Clinton signed into law the "Illegal Immigration Reform and Immigrant Responsibility Act of 1996," Pub. L. No. 104-208 (hereinafter, "the Act"). Section 331 of the Act¹ directs the Secretary of State and the Attorney General to submit a report to the Judiciary Committees of the United States Senate and House of Representatives describing the

¹ Section 331 of the Act states as follows:

(a) REPORT TO CONGRESS.-- Not later than 180 days after the date of the enactment of this Act, the Secretary of State and the Attorney General shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate a report that describes the use and effectiveness of the prisoner transfer treaties with the three countries with the greatest number of their nationals incarcerated in the United States in removing from the United States such incarcerated nationals.

(b) USE OF TREATY.-- The report under subsection (a) shall include--

(1) the number of aliens convicted of a criminal offense in the United States since November 30, 1977, who would have been or are eligible for transfer pursuant to the treaties;

(2) the number of aliens described in paragraph (1) who have been transferred pursuant to the treaties;

(3) the number of aliens described in paragraph (2) who have been incarcerated in full compliance with the treaties;

(4) the number of aliens who are incarcerated in a penal institution in the United States who are eligible for transfer pursuant to the treaties; and

(5) the number of aliens described in paragraph (4) who are incarcerated in Federal, State, and local penal institutions in the United States.

(c) RECOMMENDATIONS.-- The report under subsection (a) shall include the recommendations of the Secretary of State and the Attorney General to increase the effectiveness and use of, and full compliance with, the treaties. In considering the recommendations under this subsection, the Secretary and the Attorney General shall consult with such State and local officials in areas disproportionately impacted by aliens convicted of criminal offenses as the Secretary and the Attorney General consider appropriate. Such recommendations shall address--

(1) changes in Federal laws, regulations, and policies affecting the identification, prosecution, and deportation of aliens who have committed criminal offenses in the United States;

(2) changes in State and local laws, regulations, and policies affecting the identification, prosecution, and deportation of aliens who have committed a criminal offense in the United States.

(3) change in the treaties that may be necessary to increase the number of aliens convicted of criminal offenses who may be transferred pursuant to the treaties;

(4) methods of preventing the unlawful reentry into the United States of aliens who have been convicted of criminal offenses in the United States and transferred pursuant to the treaties;

(5) any recommendations by appropriate officials of the appropriate government agencies of such countries regarding programs to achieve the goals of, and ensure full compliance with, the treaties;

(6) whether the recommendations under this subsection require the renegotiation of the treaties; and

(7) the additional funds required to implement each recommendation under this subsection.

"use and effectiveness of the prisoner transfer treaties with the three countries with the greatest number of their nationals incarcerated in the United States in removing from the United States such incarcerated nationals." This Report has been prepared by the Departments of State and Justice in accordance with the requirements of Section 331 of the Act, and will review and analyze our prisoner transfer relations with treaty partners **the United Mexican States ("Mexico"), Canada, and the United Kingdom of Great Britain and Northern Ireland ("the United Kingdom"/"U.K.")**.²

II. OVERVIEW

The United States is now a party to eight bilateral treaties, one multilateral treaty, and three transfer agreements³ involving over thirty countries and nationalities. The overwhelming majority of our transfers occur with Mexico and Canada; significant numbers of transfers also occur between the United States and the United Kingdom, and this report will thus focus on the effectiveness of our programs with Mexico, Canada, and the United Kingdom.⁴

² A December 1996 report of the Attorney General, submitted to the Judiciary Committees of the United States Senate and House of Representatives pursuant to Section 330(d) of the Act, addressed the question of whether all of the prisoner transfer treaties to which the United States is a party had been effective in the preceding year in bringing about the return of incarcerated aliens to the country of which they were nationals and in ensuring that they served the balance of their sentences.

³ The multilateral treaty to which the United States is a party is the Council of Europe Convention on the Transfer of Sentenced Persons. Virtually all of the countries of Europe are signatories to the Convention, as are a number of countries outside of Europe such as the United States and Canada. The United States will become a party to a second multilateral treaty, which serves many of the countries of North and South America - the "Inter-American Convention on Serving Criminal Sentences Abroad" - when it is ratified by the United States Senate. Also pending before the Senate is a bilateral prisoner transfer agreement between the United States and Hong Kong. Finally, the United States is currently a party to separate agreements with three countries under the Compact of Free Association (an agreement on extradition, mutual assistance in law enforcement matters, and penal sanctions): the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

⁴ Section 331 requires us to describe "the use and effectiveness of the prisoner transfer treaties with the three countries with the greatest number of their nationals incarcerated in the United States." Cuba, Colombia, the Dominican Republic, and Jamaica all have many more of their nationals incarcerated in the United States than does the United Kingdom, but because the United States does not have prisoner transfer treaties with any of these countries, there are obviously no prisoner transfer relations that could be studied and reported upon here.

While we have a transfer treaty with Panama, and Panama has somewhat more of its nationals incarcerated in the United States than does the United Kingdom, fewer transfers tend to occur between the United States and Panama than between

Prisoner transfers between the United States and Mexico take place pursuant to a bilateral treaty that entered into force in November 1977; between the U.S. and the United Kingdom, they take place pursuant to the Council of Europe Convention on the Transfer of Sentenced Persons (hereinafter, "the Convention")⁵; and between the U.S. and Canada, transfers take place both under both a bilateral treaty (which entered into force in July 1978) and under the Convention, to which Canada has been a signatory since September 1985.⁶

By way of background, it should be noted that our government in 1977 negotiated the first in a series of international treaties designed to permit the transfer of prisoners convicted of crimes in foreign countries to return to their home countries to serve their sentences of confinement or supervision. These treaties and agreements were intended to relieve the special hardships that fall upon offenders incarcerated far from home, and to further their rehabilitation and reintegration into their home culture, and this intention was often written into the treaties as a principal purpose behind the treaty negotiation. The treaties also sought to relieve the diplomatic and law enforcement tensions that can arise when one country imprisons significant numbers of another country's nationals. Through our prisoner transfer treaties, many Americans have been returned to the United States, and even greater numbers of foreign nationals convicted in the United States have been returned to their home countries to complete the service of their sentences.

A primary goal of the United States delegations in negotiating the original prisoner transfer treaties was to permit the expeditious transfer of United States citizens back to the United States. Although all the agreements are reciprocal, the initial expectation of the negotiators was that the overwhelming majority of transfers would be by United States nationals, and that transfers by foreign nationals from United States prisons would be relatively few. The legislative history of 18 U.S.C. 4102, the enabling legislation for the U.S. Government's

the United States and the United Kingdom. (This is believed to be because Panama requires its returning nationals to bear many of the costs associated with the transfer process.) For example, in 1996 we approved seven Panamanian applications, but four of these cases are still unresolved because Panama has not requested the transfer of the prisoners. Accordingly, we have decided that describing the use and effectiveness of our prisoner transfer program with the United Kingdom would be more meaningful.

⁵ The Convention entered into force for the United States in July 1985, and for the United Kingdom in August 1985.

⁶ Prisoners may transfer between the United States and Canada by means of either mechanism. It is the prospective transferee who triggers whether the Convention or the bilateral treaty will control in each transfer situation between our two countries. (See, e.g., Article 22 of the Convention.)

participation in international prisoner transfers, makes congressional intent clear on this point.⁷ Because of the emphasis placed on rehabilitation of the offender, the offender's consent to the transfer is a requirement in all of our treaties, and is also required by our own enabling legislation.⁸

Overall, implementation of the prisoner transfer treaties has been reasonably smooth. Although there is some basis for some of the complaints that have been made about the program, and both the Department of State and the Department of Justice work continuously to improve its operation, a number of the proposed changes to the program put forward in Congress and elsewhere could easily result in unintended legal and political consequences. As we discuss further below, some modification of

⁷ The legislative history states that "[o]ffender rehabilitation, which is one of the primary objectives of U.S. penal policy, is facilitated as a result of execution of penal sentences in an offender's own country. Rehabilitation is less likely to take place where the environment in which the offender finds himself is unfamiliar and sometimes hostile to him." H.R. Rep. No. 720, 95th Cong., 1st Sess. 26, reprinted in 1977 U.S.C.C.A.N. 3146, 3149.

The legislative history and the reasoning behind the prisoner transfer treaties focused primarily on humanitarian concerns, especially at a time when many in this country were aware of instances in which Americans had been incarcerated abroad under harsh -- sometimes barbaric -- conditions. Indeed, complaints about the treatment of Americans jailed in foreign prisons were the driving force behind the original prisoner transfer treaties and implementing legislation. *Id.* at 3146-3147. At that time, the drafters could not have foreseen some of today's serious prison problems including: limited prison space, with court-ordered caps, resulting in the early release of serious offenders; foreign prisoners serving lengthy mandatory prison terms in United States prisons because of strict new federal drug laws and sentencing guidelines; and the severely strained corrections resources of the states and the Federal Government. Instead, the drafters focused on the fact that prisoners serving their sentences in a foreign country might be grateful to have a way to serve their time closer to their friends and family. Outgoing foreign nationals and their governments were also pleased to have a way to return prisoners to their home countries. While the concerns that informed the drafting of our treaties no longer dominate our thinking in the prisoner transfer area, they still bind our actions.

⁸ In fact, the preamble to the U.S.-Canada treaty states that the two parties desire: "to enable offenders, with their consent, to serve sentences of imprisonment or parole or supervision in the country of which they are citizens, facilitating their successful reintegration into society...." The Convention and the bilateral treaty with Mexico also stress the offender's "social rehabilitation" in their preambles, and the offender's consent and/or need to initiate the transfer process is explicitly required in all three documents. The Convention does, however, provide for consent by an offender's legal representative if the transfer of the offender is believed necessary by one of the two countries involved because of age, physical condition, or mental condition.

Still, we do not in principle oppose the concept of prisoner transfer agreements that do not require the prisoner's consent prior to any transfer. We do, however, have some misgivings about any wholesale treaty renegotiation effort geared solely to eliminating the consent requirement in our existing agreements. See, *e.g.*, the discussion infra on pp. 20-21.

the treaties may be helpful, especially in light of some significant changes in law enforcement, international relations, and penal policies within the United States, but we would be remiss if we did not also reiterate here that the existing treaties and overall prisoner transfer program continue to provide a viable framework for international prisoner transfer.

III. ADMINISTRATION OF PRISONER TRANSFER TREATIES IN GENERAL

All of the prisoner transfer treaties to which the United States is a party set out certain legal requirements for prisoner-applicants, and outline the responsibilities and procedures of the governments. The treaties strive to preserve the sovereignty of each party, and thus all treaties assign to the administering party (the country which is receiving the prisoner and will be administering the sentence) the right to determine the method and date of final release according to its own laws and procedures. The administering party therefore applies its regulations on jail and prison credits, furloughs, parole, and release.

CRITERIA FOR TRANSFER

The decision of the Department of Justice to approve or deny the transfer request of a foreign national incarcerated in the United States is based upon an evaluation of the entire record of the prisoner, which generally includes a review of the offense(s) and the prisoner's role in the offense(s), as well as his/her prior criminal record (if any), citizenship and immigration status, and social history. The offender's transfer is subject to the approval of both the sending and receiving countries. All current treaties and the governing United States law (viz., 18 U.S.C. § 4100(b)) require the consent of the offender as well.

All of the prisoner transfer treaties to which the United States is a party place some restrictions on a prisoner's eligibility to transfer. Under most of the treaties, a prisoner may not transfer if: (1) the prisoner has less than six months left to serve at the time of application, (2) the offense is not a crime in the country that would receive the prisoner, or (3) an appeal or collateral attack on the conviction is pending. In general, prisoners must be serving a determinate sentence, i.e., they must have been sentenced to a fixed term of years, and most treaties also do not permit the transfer of offenders who were convicted solely of military or immigration offenses.⁹ In

⁹ Our bilateral treaties with Mexico and Canada include all of these limitations, although the U.S.-Canada treaty also allows for the sentence originally imposed to be one of life imprisonment or to be indefinite confinement for a dangerous or habitual offender, and the U.S.-Mexico treaty also excludes from consideration for eligibility any prisoner sentenced for a "political

addition to these usual treaty restrictions, the Department of Justice will not authorize the transfer of a foreign national who: (1) is still needed as a witness, (2) is suspected of additional criminal offenses or has additional pending charges, (3) was convicted of an exceptionally serious offense, or (4) appears to have such profound family ties to the United States that it seems unlikely that he/she will remain in his/her home country once released from custody there. The above are the principal reasons that prisoners are denied transfer. In addition, prisoners are denied transfer because of outstanding fines or restitution orders, repeated illegal entries into the United States, or an overall history that suggests that the prisoner has minimal rehabilitative potential. Not surprisingly, a large number of prisoner-applicants have their transfer applications denied because the prisoners cannot satisfy the above criteria.

During treaty negotiations, parties generally elect a method of sentence administration. Although a few parties convert the foreign sentence imposed when they take back their own nationals, most parties elect to continue enforcement of the sentence the prisoner received abroad.¹⁰

JUDGING THE EFFECTIVENESS OF THE PRISONER TRANSFER TREATIES

In order to gauge the effectiveness of our prisoner transfer treaties, as well as the Department of Justice's performance pursuant thereto, it is important to understand what the treaties were designed to accomplish. The purpose of every prisoner transfer treaty to which the United States is a party is to enhance the rehabilitative potential of transferring prisoners by allowing them to serve the remainder of their sentences in the country of their nationality, close to family and friends. The treaties were never designed to serve merely as vehicles for the removal of illegal aliens from United States jails. Indeed, the legislative history of 18 U.S.C. § 4100 et seq. indicates that transfers were intended to benefit prisoners who were amenable to

offense within the meaning of the Treaty of Extradition of 1899." The Convention only imposes the "same offense" limitation of this list.

¹⁰ Countries that have elected to convert a transferred sentence in effect resentence the offender to the type and length of punishment he or she would have received for the same or a similar offense had the offense occurred in the administering country. Countries that elect to continue a transferred sentence have simply agreed to administer the term of years given by the sentencing country in the same manner that they would administer that term of years if given by a court in their country.

rehabilitation.¹¹ For example, serious and/or repeat offenders, and prisoners with strong ties to the United States, were not the intended beneficiaries of the prisoner transfer treaties.¹² There are large numbers of transfer requests that the United States must deny because of our own law enforcement interests. An improvident transfer of a prisoner could completely defeat another prosecution where the prisoner is wanted on other charges, or where the prisoner is needed as a witness in another case. In the last seven months of Fiscal Year 1996, for example, non-discretionary reasons¹³ were a factor in approximately 73 percent of the 411 outgoing applications that were denied by the Department of Justice.

In addition to United States law enforcement interests that preclude the transfer of many applicants, a prisoner's strong ties to the United States may also defeat a transfer request. The legislative history of 18 U.S.C. § 4100 makes clear that transfer is a benefit for prisoners incarcerated far from home, family, and friends. Individuals who have minimal contacts with the sentencing country, young people, and first-time offenders

¹¹ See footnote 7, supra. Unless and until these treaties are redrafted, the Department of Justice must process transfer applications pursuant to the conditions and limitations set forth therein, notwithstanding more recent sentiments relating to foreigners incarcerated in United States prisons. The Departments of State and Justice are currently examining ways in which transfer treaties may be modified to address current sensibilities and Administration priorities.

¹² The legislative history recognizes that there are situations where, "for matters of future law enforcement, continuing investigation, or other national interests," a prisoner should not be transferred to his/her home country. H.R. Rep. No. 720, 95th Cong., 1st Sess. 32, reprinted in 1977 U.S.C.C.A.N. 3146, 3155. Such situations are described in the legislative history as "unusual," and the clear preference expressed by Congress was that prisoners who requested transfer be granted transfer. However, it appears that the real focus of this preference was on the Attorney General's approving virtually every transfer requested by an American prisoner whose application to transfer was authorized by a foreign government. Thus, in describing the "unusual" situations involving dangerous offenders, national security, or law enforcement interests where a requested transfer would be disapproved by the United States, the legislative history states that the "Attorney General should not agree to the return of the offender... to the United States." Id (emphasis added). This approach is clearly in accord with the primary objective of the original prisoner transfer treaties and implementing legislation - to bring back Americans imprisoned abroad. Moreover, in 1977 Congress could not have predicted the current situation in United States prisons where, largely as a result of the increasing numbers of narcotics convictions, more foreign nationals imprisoned in the United States are needed for testimony in related cases or are cooperating in other investigations as a condition of their plea agreements.

¹³ The nondiscretionary reasons that arise frequently to mandate denial of a proposed transfer are: (1) the prisoner has a pending appeal, (2) the prisoner is facing additional charges, (3) the prisoner's testimony is needed in another case, and (4) the prisoner is a domiciliary of the United States.

are good candidates for prisoner transfer.¹⁴ A significant number of prisoners who apply for transfer do not fit within this profile. Many applicants are legal permanent residents or long-time residents of the United States with entire families living in the United States. The prisoner transfer treaties were clearly not intended to be applied to such individuals, who, even if transferred, would likely return quickly to the United States upon their release from a foreign prison.

Viewed within this context, we believe that the prisoner transfer treaties to which the United States is a party have been reasonably effective in returning qualified incarcerated aliens to the countries of which they are nationals. Individuals who satisfy the criteria for transfer are sent back to their home country to serve the remainder of their sentence. Without the avenue provided by the prisoner transfer treaties, these individuals would have no possibility of returning to their homes and seeing their families until their release date from prison in the United States. Without the treaties, Americans would similarly have to serve their entire sentences in foreign prisons.

Because all of our treaties and agreements, as well as our enabling legislation, require the explicit consent of the offender, no prisoner may be forced to transfer to a prison in his/her home country.¹⁵ Undoubtedly, some additional prisoners could be transferred out of the United States if all the treaties were renegotiated to eliminate the consent requirement. Some countries, such as Canada and Mexico, however, have consent requirements embedded in their constitutions and/or laws and may be unwilling or unable to renegotiate prisoner transfer treaties to eliminate the consent requirement.

¹⁴ The "most fundamental justification" for the prisoner transfer legislation is described in the legislative history as "human rights." Incarceration in a "foreign jail creates special hardships upon the individual offender, and his family." The treaties were intended to "alleviate the special hardship incident to confinement... away from home." H.R. Rep. No. 720, 95th Cong., 1st Sess. 26, reprinted in 1977 U.S.C.C.A.N. 3146, 3149. Prisoners whose entire families are in the United States and who have few, if any, ties to the country of their birth suffer no discernable special hardship by virtue of their imprisonment in the United States that would be relieved by a transfer to a prison in another country. Ironically, should such prisoners be transferred, the actual result would be precisely the opposite of that intended by the treaties, creating the very hardship the drafters sought to overcome: the prisoner would be jailed far from his/her friends and family, who are located in the United States.

¹⁵ 18 U.S.C. § 4100(b) provides, inter alia: "An offender may be transferred to or from the United States only with the offender's consent."

IV. ADMINISTRATION OF THE TREATIES WITH THE TARGET COUNTRIES

While the United States transfers prisoners to all countries with which we have prisoner transfer treaties, the majority of prisoners who transfer from prisons in the United States do so to prisons in our neighbors to the north and south, Canada and Mexico, the home countries for most of the aliens incarcerated in prisons in the United States. These two border countries, not surprisingly, are also the places where most Americans serving time in foreign jails are incarcerated.

MEXICO

In 1996, the Department of Justice enjoyed an exceptionally successful year with its prisoner transfer program with Mexico. Still, it is clear that the Mexican national interest is not wholly congruent with that of the United States with respect to prisoner transfer. This is because Mexican prisons are already seriously overcrowded without accepting back the thousands of Mexican nationals imprisoned in the United States (discussed further, infra), while the United States seeks to return all qualified Mexican applicants to Mexico.

The most significant problems we face in the international prisoner transfer area are in our dealings with Mexico. Most of these problems are caused simply by the large number of Mexican nationals who are jailed in the U.S., in both our federal and state prisons. Some of the problems are caused by a clash of the lofty objectives of the prisoner transfer treaties with real-world problems, such as prison population growth and overcrowding. There are also concerns of our prosecutors who work along the U.S.-Mexico border that prisoners transferred to Mexico today will merely be the crime problem we will revisit tomorrow. (Some of this relates to concerns about the integrity of the Mexican prisons, and our inability to guarantee prosecutors that some of those offenders returned to Mexico - especially the hard-core drug traffickers - won't somehow be able to turn their repatriation into a release, and be back over the border well before their prison sentences would have been served in the U.S.) Until these concerns are adequately addressed, the bulk of our prisoner transfer efforts will likely continue to be expended in dealing with the problems that relate to transfers pursuant to the U.S.-Mexico treaty.

When considered amidst the clashing of interests noted above, and other problems, we still feel that the U.S. receives adequate cooperation from the Government of Mexico in repatriating significant numbers of Mexican nationals. To ensure that this program continues to improve, officials from the Departments of Justice and State have held regular meetings with their Mexican counterparts in the prisoner transfer process.

As a result of this ongoing dialogue on all levels, positive changes in both governments' processes and procedures continue to occur.

CANADA

The Department of Justice has also enjoyed an exceptionally successful year with its prisoner transfer program with Canada, and, on the whole, our prisoner transfer relations with the Canadian government have been smooth and quite productive. Perhaps this is because the Government of Canada actively seeks the return of all Canadians incarcerated in the United States. This, coupled with the high degree of confidence we have in the Correctional Service of Canada has resulted in a high approval rate for Canadian applicants who seek to transfer home to Canada. To ensure that the program with Canada continues to work smoothly, officials from the Departments of Justice and State hold regular meetings with their Canadian counterparts in the prisoner transfer process.

The differences between our prisoner transfer relations with Mexico and those with Canada make it clear that the actual terms of the treaties involved have not been a major factor: most of the terminology used in both treaties is almost identical, and both treaties were negotiated at around the same time. Instead, possibly the key factor is that many of the offenders who seek return to Canada are not believed to represent continuing problems once they are transferred, whether to the United States or Canada. As such, the "humanitarian" and rehabilitation concerns that were at the core of the prisoner transfer concept at its inception have been the guiding principles in these bilateral dealings, rather than the subtext of prison overcrowding or the fear of a "revolving door" that allows repatriated offenders to walk out of a foreign jail and return to a life of crime in our country. Our longstanding dealings with those officials of the Canadian government who handle prisoner transfers and our experience with that country's handling of past transfer situations have given rise to our trust in the workings of the Canadian prison system and a high degree of confidence in the officials themselves. In that regard, assurances of the Canadian government that certain actions will be taken - especially relating to the administration of sentences - tend to be given great weight. This degree of trust adds significantly to our highly productive prisoner transfer relations with Canada.

UNITED KINGDOM

Many of the comments about dealing with the Canadian government are likewise true about our dealings under the Convention with the United Kingdom. Certainly generations of U.S.-U.K. bilateral cooperation, combined with our shared legal heritage, have played a role in this situation, and the

confidence we have in our U.K. counterparts and the integrity of their system for administering sentences has substantially facilitated even complicated prisoner transfer requests.

V. USE AND EFFECTIVENESS OF THE THREE TREATIES

Section 331(b) of the Act calls for a quantitative assessment of the Federal Government's use of the prisoner transfer agreements with Canada, Mexico, and the U.K. relating to five specific criteria.¹⁶ However, such an assessment can only be based on the limited statistics available to us, and, unfortunately for purposes of this report, figures are not available in all of the areas of interest to Congress. This is because, until fairly recently, the Bureau of Prisons did not routinely compile citizenship and nationality data on their respective inmate populations. This type of data began to become available as to federal prisoners only in 1984, when the Bureau of Justice Statistics conducted a survey of federal inmates.

In Section 331(b)(1) of the Act, we have been asked to report on "the number of aliens convicted of a criminal offense in the United States since November 30, 1977, who would have been or are eligible for transfer pursuant to the treaties." As we have explained above, data was not kept as to the number of alien inmates until 1984. A fortiori, data is not available on alien inmates who might be (or have been) eligible for transfer under our prisoner transfer agreements. In addition to this primary limitation, an assessment of eligibility depends on the specific requirements of their particular treaty governing transfer, coupled with a review of the offender's particular characteristics, and most of that sort of information would not be available as to persons who have not applied for transfer; therefore, even if we had data concerning the total number of aliens in custody since 1977, we would not be able to provide a reliable figure on the number of those aliens who might have been eligible under our treaties.¹⁷

In Section 331(b)(2), we have been asked to report on "the number of aliens described in paragraph (1) who have been transferred pursuant to the treaties." While the figure for paragraph (1) is not available, we can report that a total of 2,421 aliens have been transferred from the United States since 1977. These include 1,810 aliens who were transferred to Mexico, 441 who were transferred to Canada, and 24 who were transferred to the United Kingdom.

¹⁶ See footnote 1, supra.

¹⁷ See "Criteria for Transfer" on pp. 5-6, supra.

In Section 331(b)(3), we have been asked to report on "the number of aliens described in paragraph (2) who have been incarcerated in full compliance with the treaties." Our partners are in compliance with the treaties when they set release dates in accordance with their own laws and regulations on release, parole, furloughs, and the like. Based upon our ongoing relations with our treaty partners, we are satisfied that, under the terms of all the operative treaties, all prisoners who transferred from the United States during the preceding year have served or are currently serving the balance of their sentences in prisons in the country to which they transferred, pursuant to the laws governing sentence administration in that country.

In considering issues regarding time remaining to be served by transferring prisoners, it is critically important to understand how the prisoner transfer treaties to which the United States is a party have been designed to operate in the area of sentence administration. During treaty negotiations, each party-country elected its method of sentence administration. Each party elected either to continue or to convert enforcement of the transferred sentences.¹⁸ Notwithstanding whether a country decided to continue or to convert the enforcement of the transferred sentences, all of the treaties provided that the administration of the transferred offender's sentence, including the method and date of final release, would be carried out according to the laws and procedures of the receiving country. Thus, under the existing treaties, the receiving country applies its own regulations relating to sentence-computation issues such as "good time" credit, work credit, jail credit, parole, and furloughs. The receiving country does have an obligation to tell the sentencing country how the sentence is likely to be enforced, and the sentencing country can refuse to go along with the transfer if it is not satisfied with the sentence as it will be executed by the receiving country.

The United States is not aware of any irregularity in the administration of sentences for transferred prisoners by any of our treaty partners. Only our treaties with Mexico and Turkey specifically require regular reporting on the status of all transferred prisoners. Mexico's report for 1996 indicates that the prisoners accepted for transfer have served or are serving most of the U.S.-imposed sentences after transfer. No prisoners were transferred to Turkey during 1996.¹⁹

¹⁸ See note 10, supra.

¹⁹ During Fiscal Year 1996, the Department of Justice approved the transfer to Turkey of several Turkish nationals incarcerated in this country. The Government of Turkey, however, has not yet agreed to the transfer requests. Until prisoners have transferred to Turkey, Turkey cannot report on its administration of U.S.-imposed sentences.

In Section 331(b)(4), we have been asked to report on "the number of aliens incarcerated in a penal institution in the United States who are eligible for transfer pursuant to the treaties." This is a particularly difficult question to answer for several reasons. First, "eligibility" really can only be determined after a full review of the inmate's specific situation, supra. Second, most states and localities still fail to capture nationality data. Even states that do keep some kind of statistical information of this type do not, to our knowledge, supply it to any sort of central repository where we could obtain ready access to it, and the state and local governments' respective privacy provisions would likely limit our ability to connect an alien's transfer eligibility status to any raw data that we may have been able to obtain.

States which are disproportionately affected by incarcerated criminal aliens do keep some statistics on the nationality of their prison populations. The four states which are perhaps the most burdened with alien prisoners - California, Texas, Florida, and New York - have provided the information in the following chart on aliens in their prison systems.

ALIENS IN STATE CUSTODY				
	In CALIFORNIA	In TEXAS	In FLORIDA	In NEW YORK
From ALL NATIONS	26,678	5,912	5,018	9,160
From MEXICO	15,859	3,865	325	166
From CANADA	156	9	77	43
From the U.K.	127	6	49	83

Addressing only the situation of federal inmates, there were 28,081 aliens in the custody of the Bureau of Prisons as of November 1996.²⁰ Of these, approximately 10,000 were from countries with which the United States has a treaty, thus meeting the minimum threshold eligibility standard.²¹

²⁰ This figure includes 2,954 inmates as to whom citizenship data is missing.

²¹ Examining the situation with respect to the ten foreign countries with the most nationals in federal custody (Mexico, Colombia, Cuba, Dominican Republic, Jamaica, Nigeria, China, Haiti, Canada, and Venezuela), it should be noted that we have prisoner transfer treaties with only two of them: Mexico and Canada.

In Section 331(b)(5), we have been asked to report on "the number of aliens described in paragraph (4) who are incarcerated in Federal, State, and local penal institutions in the United States." As noted above, this information is not obtainable for many state penal systems, and not available at all for local facilities. Of the approximately 28,000 aliens in federal custody in November, 1996, approximately 10,000 were nationals of countries with which the United States has a treaty. Experience has taught us, though, that many applicants for transfer are not eligible because of a variety of factors, such as the seriousness of the offense, an applicant's extensive family ties to the United States, the needs of law enforcement, and the like.

VI. RECOMMENDATIONS

Section 331(c) directs us to make recommendations to increase the effectiveness and use of the prisoner transfer treaties and to consult with "State and local officials in areas disproportionately impacted by [criminal] aliens" in making those recommendations. To comply with this provision, we sought the advice of officials of the states of California, Florida, New York, and Texas. Copies of their responses to us are provided in Appendix C to this report, and some of their recommendations have been incorporated into the following recommendations.

Obviously, crafting recommendations to improve an international program such as this one requires not only consultation with state officials, but also extensive consultation with foreign governments. The Departments of Justice and State are in the process of conducting an exhaustive review of the international prisoner transfer program and treaties, and examining possible changes that not only consider the views of the states but also consider the economic and foreign policy implications of some of the proposals.

This study is being conducted in part in response to Section 330 of the Act, which advises the President to renegotiate our current prisoner transfer treaties. The focus of such renegotiations is to be, inter alia, on: (1) eliminating any requirement of prisoner consent to transfer, and (2) ensuring that, once transferred, prisoners serve their full sentences as imposed in the United States.²² In the interest of our timely

²² Pertinent provisions of the actual text of Section 330 are as follows:

(a) NEGOTIATIONS WITH OTHER COUNTRIES.-- (1) Congress advises the President to begin to negotiate and renegotiate, not later than 90 days after the date of enactment of this Act, bilateral prisoner transfer treaties, providing for the incarceration, in the country of the alien's nationality, of any alien who--

(A) is a national of a country that is party to such a treaty; and

compliance with the requirements of the instant report, however, we could not wait for the completion of this study. We will provide our further recommendations concerning the use and effectiveness of the prisoner transfer treaties once the study is completed. We now address the specific recommendations required by Section 331(c):

(1) Section 331(c)(1) asks us to address "changes in federal laws, regulations, and policies affecting the identification, prosecution, and deportation of aliens who have committed criminal offenses in the United States." The Bureau of Prisons [BOP] has recently begun to include nationality as a category on intake documents for all federal inmates. The BOP, working with the Immigration and Naturalization Service [INS], also tracks deportation detainers of federal inmates. A data base of all federal prisoners that contains nationality and immigration/deportation status should ensure the identification of illegal aliens in the federal prison population.

-
- (B) has been convicted of a criminal offense under Federal or State law and who--
- (i) is not in lawful immigration status in the United States, or
 - (ii) on the basis of conviction for a criminal offense under Federal or State law, or on any other basis, is subject to deportation or removal under the Immigration and Nationality Act,

for the duration of the prison term to which the alien was sentenced for the offense referred to in subparagraph (B). Any such agreement may provide for the release of such alien pursuant to parole procedures of that country.

(2) In entering into [such negotiations], the President may consider providing for appropriate compensation . . .

- (b) SENSE OF CONGRESS.-- It is the sense of the Congress that--
- (1) the focus of negotiations for such agreements should be

-
- (A) to expedite the transfer of aliens unlawfully in the United States who are (or are about to be) incarcerated in United States prisons,
 - (B) to ensure that a transferred prisoner serves the balance of the sentence imposed by the United States courts,
 - (C) to eliminate any requirement of prisoner consent to such a transfer, and
 - (D) to allow the Federal Government or the States to keep their original prison sentences in force so that transferred prisoners who return to the United States prior to the completion of their original United States sentences can be returned to custody for the balance of their prison sentences.

(2) the Secretary of State should give priority to concluding an agreement with any country for which the President determines that the number of aliens described in subsection (a) who are nationals of that country in the United States represents a significant percentage of all such aliens in the United States, and

(3) no new treaty providing for the transfer of aliens from Federal, State, or local incarceration facilities to a foreign incarceration facility should permit the alien to refuse the transfer.

Last year, in Section 432 of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132 (hereinafter, "the Antiterrorism Act"), Congress amended the Violent Crime Control and Law Enforcement Act of 1994 to authorize the Commissioner of the Immigration and Naturalization Service to operate a criminal alien identification system. (This provision was a restatement of authority previously given by Congress to the INS in 1988 and 1990.) The purpose of the system is to "assist Federal, State and local law enforcement agencies in identifying and locating aliens who may be subject to deportation by reason of their conviction of aggravated felonies." This identification system is currently operational as part of the Law Enforcement Support Center (LESC) in South Burlington, Vermont. Section 327 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 authorizes the appropriation of \$5 million to the LESC for each of fiscal years 1997 through 2001.²³

We do not believe that there are any changes necessary in federal laws, regulations, or policies to affect the "prosecution of illegal aliens for criminal offenses." The potential for deportation is the penalty that distinguishes aliens from United States citizens. As discussed below, the current laws do provide for deportation after conviction for nonviolent illegal aliens, and the United States can and does deport illegal aliens instead of prosecuting them for various offenses. We see no reason to differentiate between illegal aliens and United States citizens in the prosecution of more serious criminal offenses - for which, if convicted, the offender should receive a sentence of incarceration. Treating illegal aliens differently than United States citizens in the prosecution of these types of offenses would often result in the alien receiving far more lenient treatment - deportation to his or her home country with no accompanying prison term - than an American citizen convicted and imprisoned for the identical offense.²⁴ In terms of

²³ The LESC was created to provide timely status information on aliens who have been arrested for an aggravated felony offense. In response to a request for immigration status, the LESC staff queries six INS databases, and also keeps its own database of queries and responses. Direct access to the LESC is available via the National Law Enforcement Telecommunications System 24 hours a day, seven days a week. The LESC notifies the affected INS field offices that suspected foreign nationals have been arrested for the commission of aggravated felonies; as appropriate, the INS offices investigate as many of these referrals as possible, which can result in the lodging of an immigration detainer against the alien and initiation of removal proceedings, as well as referral to the United States Attorney's Office for prosecution of any reentry after deportation, pursuant to 8 U.S.C. 1326. The LESC system is currently operational in Arizona, Iowa, and Florida. Future expansion plans depend on the results of an independent evaluation being conducted this fiscal year.

²⁴ Moreover, an attempt to distinguish between illegal aliens and United States citizens for the purposes of criminal prosecution is a constitutional minefield. The full scope of the constitutional rights and protections afforded

deterrence, preserving the integrity of our criminal justice system and protecting the rights of crime victims, we should not countenance such a result.

Finally, Section 331(c)(1) asks us to address recommendations for the "deportation of aliens who have committed criminal offenses in the United States." The Antiterrorism Act contains extensive revisions to the Immigration and Nationality Act designed to simplify and expedite the deportation of criminal aliens. Title IV of the Act relates to the expeditious removal and exclusion of alien terrorists and criminal aliens. Of particular relevance for the purposes of this report are the provisions of the Act authorizing the deportation of nonviolent offenders prior to completion of their prison sentences²⁵ and foreclosing judicial review of final orders of deportation

to various classes of aliens in the United States has not been settled by the courts. Compare United States v. Verdugo-Urquidez, 494 U.S. 259, 265 (1990) (Fourth Amendment), with Underwager v. Channel 9 Australia, 69 F.3d 361, 365 (9th Cir. 1995) (Fifth Amendment). Any effort at prosecuting illegal aliens in a manner different from legal aliens and United States citizens must necessarily take into account the constitutional protections of a fair trial guaranteed by the Fifth Amendment. We are not aware of any problems unique to the prosecution of illegal aliens that warrant visiting this constitutional quagmire.

²⁵ That provision, Section 438 of the Antiterrorism Act, amending 8 U.S.C. 1252(h), reads in relevant part:

(2) The Attorney General is authorized to deport an alien in accordance with applicable procedures under this Act prior to the completion of a sentence of imprisonment -

(A) in the case of an alien in the custody of the Attorney General, if the Attorney General determines that (i) the alien is confined pursuant to a final conviction for a nonviolent offense.... and (ii) such deportation of the alien is appropriate and in the best interests of the United States; or

(B) in the case of an alien in the custody of a State (or a political subdivision of a State), if the chief State official exercising authority with respect to the incarceration of the alien determines that (i) the alien is confined pursuant to a nonviolent offense... (ii) such deportation is appropriate and in the best interest of the State, and (iii) submits a written request that such alien be so deported.

This provision differs from the transfer of a criminal alien governed by the prisoner transfer treaties. Unlike prisoner transfers pursuant to treaties, aliens removed from the United States under Section 438 will not be required to complete the service of their sentences when they arrive in their home countries. Prisoners transferred pursuant to our prisoner transfer treaties, however, are incarcerated for the balance of their sentences as administered by the home country. Also significant is the fact that aliens deported under Section 438 must be convicted of nonviolent offenses, while candidates for prisoner transfer are not limited by the type of offense for which they were convicted and incarcerated.

against certain criminal aliens.²⁶ The INS is currently in the process of implementing these criminal alien removal provisions. We would like sufficient time to determine the effectiveness of these new laws before we make recommendations for further changes to statutes or regulations governing the deportation of illegal aliens convicted of crimes.

(2) Section 331(c)(2) asks for recommended changes in "State and local laws, regulations, and policies affecting the identification, prosecution, and deportation of aliens who have committed a criminal offense in the United States." Attached, as Appendix C, are the full recommendations of the states from which we solicited comments for this report.²⁷ In addition to those recommendations, we would note that several provisions of the Antiterrorism Act apply specifically to the states. In addition to the provisions establishing a criminal alien identification system and authorizing the deportation of nonviolent offenders prior to the completion of their sentences, both of which are intended to benefit state and local governments, as well as the Federal Government,²⁸ the Act contains a provision authorizing state and local law enforcement officers to arrest and detain certain illegal aliens.²⁹

²⁶ Section 440 of the Antiterrorism Act, amending 8 U.S.C. 1105a(a)(10), reads in relevant part:

(10) Any final order of deportation against an alien who is deportable by reason of having committed a criminal offense covered in section 241(a)(2)(A)(iii), (B), (C), or (D), or any offense covered by section 241(a)(2)(A)(ii) for which both predicate offenses are covered by section 241(a)(2)(a)(i), shall not be subject to review by any court.

Crimes covered in those sections include aggravated felonies, narcotics offenses, certain firearms offenses and espionage or multiple convictions for crimes of moral turpitude.

²⁷ As noted above, we solicited views from those states most affected by illegal alien populations.

²⁸ Also see the discussion of these provisions in the text at footnote 23, supra.

²⁹ Section 439 of the Antiterrorism Act reads in relevant part:

(a) IN GENERAL. - Notwithstanding any other provision of law, to the extent permitted by relevant State and local law, State and local law enforcement officials are authorized to arrest and detain an individual who -

- (1) is an alien illegally present in the United States; and
- (2) has previously been convicted of a felony in the United States and deported or left the United States after such conviction,

but only after the State or local law enforcement officials obtain appropriate confirmation from the Immigration and Naturalization Service of the status of

(3) Section 331(c)(3) asks for recommended changes to the prisoner transfer treaties that "may be necessary to increase the number of aliens convicted of criminal offenses who may be transferred pursuant to the treaties." We have several such recommendations, both as to the treaties and as to the use of the prisoner transfer program:

First, we should commence negotiating prisoner transfer treaties with some of the countries with which we do not now have treaties. Most of our current prisoner transfer relationships are with European nations that are signatories to the Council of Europe Convention on the Transfer of Sentenced Persons, or they are with nations with which we pursued bilateral treaties because there were United States citizens incarcerated there. Although overall foreign policy considerations may limit our ability to negotiate treaties with some of these nations, there are others with which we should actively pursue a prisoner transfer agreement. The ratification of the Inter-American Convention on Serving Criminal Sentences Abroad would be of substantial assistance to us in this achieving this goal because it would make transfers immediately available to and from Venezuela, Costa Rica, and Ecuador. The negotiation of additional prisoner transfer treaties was recommended by both the State of California and the State of New York.³⁰

Second, the states should make more frequent use of the program. Forty-one states have the necessary implementing legislation to participate in the international prisoner transfer program, and many states are quite vocal about the frustrations of incarcerating a large population of criminal aliens. Nevertheless, in calendar year 1996, state correctional authorities approved a total of only 79 of their prisoners for foreign transfer. These 79 prisoners came from seven states and the District of Columbia.³¹

Third, we should continue to explore the feasibility of modifying our current treaties and the Convention to eliminate the requirement for consent of the prisoner. Although an across-

such individual and only for such period of time as may be required for the Service to take the individual into Federal Custody for the purposes of deporting or removing the alien from the United States.

³⁰ California noted that approximately one-third of its foreign inmates could not apply for transfer to their home country because the United States had no treaty with those countries. Similarly, New York noted that 30 percent of its foreign-born inmates were from the Dominican Republic, and that an additional 16 percent of these were from Jamaica; neither of these countries has a prisoner transfer treaty with the United States.

³¹ Alabama (1), Arizona (18), California (35), D.C. (1), Florida (2), Illinois (3), Massachusetts (2), and New York (17).

the-board elimination of consent would not be acceptable to many of our European treaty partners (because they continue to place emphasis on rehabilitation of the transferred prisoner as the justification for transfer), or to Mexico and Canada (both of which are limited in this area by provisions in their constitutions), there are perhaps some narrow classes of cases in which consent might be eliminated in some of our treaties.

Still, eliminating consent is fraught with problems that need to be addressed. For one, involuntary prisoner transfer raises serious human rights issues, principally because the United States cannot guarantee that foreign prison officials will respect the human rights of involuntarily transferred prisoners.³² Moreover, a prisoner incarcerated in the United States who faced transfer without his or her consent could potentially mount an Eighth Amendment challenge to the proposed transfer. Less obviously, any proposal to our treaty partners to permit prisoner transfer without consent would almost certainly require granting the same privilege reciprocally.³³ If so, the transfer to, and detention in, the United States of involuntarily transferred United States citizens would almost certainly face serious challenges in our courts.

Of course, as noted supra, the original basis for the negotiation of prisoner transfer treaties - rehabilitation of the offender and social reintegration - may weigh heavily against some transfers, especially where an inmate has limited ties to his or her country of birth and the inmate's family resides in the country where he or she is being incarcerated.

In comments solicited from state governments particularly affected by a large number of incarcerated foreign nationals, the elimination of consent was recommended by California and supported to a certain degree by Florida. The State of New York noted that prisoner consent was a requirement under its existing prisoner transfer legislation, and thus eliminating the consent requirement in the treaties would only be helpful if the state law could be similarly amended.

Renegotiating existing treaties to eliminate consent poses many problems. Based on informal consultation with treaty

³² In the case of the non-consensual transfer of prisoners to other countries, the United States would have to bear some moral responsibility regarding human rights abuses that occurred after transfer, and might possibly be held legally accountable as well.

³³ At the same time, eliminating the requirement of a prisoner's consent will not rectify - and may even exacerbate - the problem we have occasionally experienced with some countries, which may be unable, because of internal political concerns or inadequate prison space, to comply fully with existing treaty obligations and accept all of their nationals who have requested transfer.

partners over the years, we believe that many of them would resist the crushing administrative and financial burdens on their prison systems that eliminating consent might occasion, particularly for countries with many nationals in prison in the United States. We will continue to encourage our treaty partners to accept the transfer of more of their nationals, but exerting pressure on reluctant treaty partners could result in compliance problems. Treaties negotiated or renegotiated with negative incentives would likely result in minimal or nominal compliance by the treaty partner, and foreign governments that have signed such agreements under what they believe to be duress may not honor their commitments to keep potentially dangerous felons in prison after transfer.

Negotiating treaties is a resource-intensive activity that requires a substantial commitment of time, personnel, and travel funds. Renegotiating existing treaties with our partners would require significant additional resources and substantial inter-agency coordination. Even if these renegotiations were entirely successful, each treaty partner would need to complete domestic ratification procedures and perhaps take additional steps to enact or amend domestic implementing legislation. We know that at least one country would have to amend its constitution to eliminate the consent requirement. In short, the effort to renegotiate existing treaties to eliminate the consent requirement would be expensive and time-consuming, might ultimately be less than successful, and could cause bad feelings with our treaty partners who negotiated the original treaties in good faith on grounds of equity and compassion, that have now become matters of economy and expedience.

(4) Section 331(c)(4) asks for our recommendations for "methods of preventing the unlawful reentry into the United States of aliens who have been convicted of criminal offenses in the United States and transferred pursuant to the treaties." The Department of Justice is continuing to work with the INS to ensure that transferred aliens have deportation orders, as well as in other ways to identify and prevent unlawful reentries. Two INS initiatives designed to prevent unlawful reentry are currently in place along the southwest border. One of these - the CAL-DOJ project - targets criminal aliens who have been removed pursuant to a final order of deportation under the California Institutional Hearing Program. The INS sends fingerprints to the State of California for inclusion in their fingerprint database. The state then flags the alien's criminal history so that a fingerprint search following a future arrest by local law enforcement will reveal the alien's previous deportation.

The second initiative - the IDENT Program - is a biometrics system used to fingerprint and photograph every apprehended border crosser along the southern border. This program provides

assistance in the identification of repeat illegal entrants and aliens wanted by other law enforcement agencies. This program is currently being expanded to numerous sites in Arizona, Florida, Louisiana, New Mexico, and Texas.

In addition, the United States Attorneys' Offices and INS have been working closely together to increase prosecutions for violations of 8 U.S.C. 1326 ("Reentry of Removed Alien"), particularly in jurisdictions with a large volume of potential cases. Under this statute, the penalty for unauthorized reentry is significant, up to 10 years incarceration for a removal subsequent to a conviction of three or more misdemeanors involving drugs, crimes against a person, or both, or a [non-aggravated] felony. An alien whose removal is subsequent to a conviction for an aggravated felony offense may be imprisoned for up to 20 years; this sentence must be consecutive to any other sentence. Section 334 of the Illegal Immigration Reform and Immigrant Responsibility Act directs the U.S. Sentencing Commission to promulgate amendments to the sentencing guidelines for appropriate increases in the base offense level for reentry offenses.³⁴

Finally, we note that Section 331(c)(4) asks for information that is almost identical to one of the four topic areas in Section 332 of the Act, which requires an annual report to be prepared by the Attorney General concerning several broad questions about how the Federal Government currently handles the problem of criminal aliens. The concluding area of inquiry in Section 332 focuses on aliens convicted of criminal offenses in the United States, and asks how we propose to identify and prevent the unlawful reentry of those aliens convicted of criminal offenses in the United States who have been "removed" from this country. While the use of the term "removed" focuses the inquiry more on deportations and related immigration matters, this term is broad enough to include bilateral transfers pursuant to our prisoner transfer treaties. As such, because of the wider coverage of the forthcoming Section 332 report, we would respectfully defer addressing this matter in the context of the narrower issue of prisoner transfer so that the problem can be addressed - more correctly we believe - in the broader context of the Section 332 annual report and its recommendations regarding the reform of our immigration laws and the related issues that face this country.

³⁴ These efforts have been successful, as evidenced by an increase of over 40 percent in the number of immigration cases filed in FY '96 over FY '95, including a similar rise in the number of prosecutions for reentry after deportation or attempted reentry. Of those FY '96 cases filed for reentry after deportation or attempted reentry, 94 percent of the defendants were convicted, and, of those, a similar percentage were sentenced to prison.

(5) Section 331(c)(5) requests "recommendations by appropriate officials of the appropriate government agencies of such regarding programs to achieve the goals of, and ensure full compliance with, the treaties." While our full recommendations must await completion of the study discussed above, on the whole, we receive few complaints from our treaty partners regarding the operation of the prisoner transfer treaties. However, one complaint that we hear frequently from our foreign treaty partners relates to the requirement that, where the foreign national is a state as opposed to a federal prisoner, the state must also give its consent. There are two difficulties with this from the point of view of our treaty partners. First, the states frequently deny transfer requests, and some states virtually never approve them. Second, although some of our treaties explicitly remind the parties of the requirement for the state's consent to the transfer of state prisoners, some treaties (for example, the Council of Europe Convention on the Transfer of Sentenced Persons) do not contain this sort of informational language. We believe that our need for state consent in the case of state prisoners is an important limitation on the operation of all of our prisoner transfer treaties, and that this requirement needs to be clear on the face of the treaties.

(6) Section 331(c)(6) requests "whether the recommendations under this subsection require the renegotiation of the treaties." As discussed above, we believe that the proposed deletion of the prisoner consent requirement will require renegotiation and/or rewriting of almost all of the existing prisoner transfer treaties, conventions, and supporting legislation.

(7) Section 331(c)(7) requests a calculation of "the additional funds required to implement each recommendation under [subsection 331(c)]." Because the actions recommended above are almost all still in the conjecture stage, it is very difficult to attach actual dollar figures to them. Still, in one area - the total revamping of our prisoner transfer treaties to drop the requirement of prisoner consent - we can imagine that the cost will be quite substantial for all of the involved governments, including the Federal Government. In that regard, the transportation and associated travel costs for the officials from the Departments of State and Justice who will be attempting to renegotiate all of the bilateral and multilateral agreements in this area will be quite large, and their full-time efforts in this regard may necessitate the hiring of additional personnel to handle the day-to-day work for their offices. Assuming that these efforts are at least partially successful, we can easily see how the dropping of the consent requirement will increase the number of incarcerated aliens having to be processed for transfer to their home countries - including an increased number of American nationals who will be involuntarily returning to the United States notwithstanding their desire to stay in their adopted homeland (where their family may be located - and forced

to remain). All of the above will necessitate increases in the travel and staffing budgets at the Departments of State and Justice, especially in Justice's Bureau of Prisons, Criminal Division, and Immigration and Naturalization Service.

VII. CONCLUSIONS

Based upon the analysis set forth in this report, along with the recommendations provided above, we have reached the following conclusions:

(1) the prisoner transfer treaties have generally worked well in accomplishing the purposes for which they were originally designed - primarily humanitarian concerns about Americans being incarcerated under harsh conditions in foreign prisons;

(2) some of the terms of the treaties, such as the requirements that the prisoner and the receiving country consent to the transfer, may actually serve to defeat current congressional and Administration desires to use prisoner transfers as one means to reduce overcrowding in federal and state prisons; and

(3) efforts to utilize further the prisoner transfer treaties to purge large numbers of foreign nationals from United States prisons may require renegotiation of these treaties with the governments of the countries involved, along with a need to modify limiting provisions in the implementing legislation, 18 U.S.C. 4100 et seq. This process, which is expected to be a complicated and lengthy one, at best, is presently under study by the Departments of Justice and State.

The Departments of State and Justice commit themselves to strengthening their efforts to effectuate and operate an effective prisoner transfer program.

APPENDIX A

**(submission from
James W. Nielsen, Chairman
Board of Prison Terms
Youth and Adult Correctional Agency
State of California)**

BOARD OF PRISON TERMS

428 J Street, 6th Floor
Sacramento, CA 95814



March 3, 1997

Ms. Maureen H. Killion
Senior Associate Director
U.S. Department of Justice
Office of Enforcement Operations
Post Office Box 7600
Ben Franklin Station
Washington, D.C. 20044-7600

Dear Ms. Killion:

Thank you for the opportunity to provide California's recommendations regarding changes to international prisoner transfer treaties.

A. Total Aliens Incarcerated

With 29,678 foreign born inmates incarcerated in the California state correctional system at an annual cost of over \$620 million, the need has never been greater to revise the existing international prisoner transfer treaties which have been largely ineffective in removing criminal aliens from the United States to their countries of origin. Over 22,000 of these inmates are believed to be in the U.S. illegally. As of January 31, 1997, the U.S. Immigration and Naturalization Service (INS) had holds on 16,443 foreign born inmates and an additional 7,092 potential holds. The remaining 6,143 foreign born inmates had no INS hold.

B. Mexican, Canadian, Panamanian and English Aliens Eligible for Treaty Transfer

You have asked for the number of Mexican, Canadian, Panamanian and English aliens eligible for treaty transfer under current law and the number who have requested transfers. There are 15,859 Mexican felons with INS holds of which only 757 have applied for transfer, 156 Canadian felons with INS holds of which 51 have applied for transfer, 40 Panamanian felons with INS holds of which only one has applied for transfer and 127 English felons with INS holds of which 6 have applied for transfer. Apparently 35 percent of the Mexican inmates are ineligible for transfer because they are serving indeterminate prison terms or have lived in the U.S. for five consecutive years without the intent to return to Mexico.

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C. Lack of Sufficient Treaties

Only 33 of the 152 countries represented in our prison system are covered by a prisoner transfer treaty. These 33 countries account for 20,472 of the foreign born inmates. That means nearly a third of foreign born inmates in California prisons cannot volunteer for transfer. The cost to California taxpayers of incarcerating these criminals is nearly \$200 million annually. The federal government must develop a means for making all foreign born inmates in the U.S. prison population eligible for transfer. This would likely necessitate negotiating new international foreign prisoner treaties.

D. Suggested Reforms

The following reforms should be considered with regard to existing international prisoner transfer treaties:

1. Foreign countries should be required to guarantee that transferred inmates will serve their full sentences upon return to their country of origin. States should not be expected to transfer an inmate if there is a chance that the prisoner will not be incarcerated for the full term of his sentence in the country of origin because of the danger posed to public safety.
2. Foreign countries should be required to meet existing requirements governing the regular exchange of information about the status of foreign prisoners that have been transferred. For example, Mexico has all but ignored the terms of the existing treaty between our two countries by failing to provide timely status reports on prisoners.
3. The federal government should explore the feasibility of eliminating inmate consent requirements from existing and any future treaties.
4. The prohibition against transferring prisoners if they have lived in the transferring country for five years or more with the intent to remain permanently should be lifted.
5. Receiving countries must be required to accept transferred inmates regardless of the cost of incarcerating the inmate in the receiving country or the seriousness of the crime committed by the foreign born prisoner.
6. States should be allowed to keep their original prison sentences in force so that transferred prisoners that return to the United States prior to the completion of their original sentences can be returned to custody for the balance of their prison sentences.

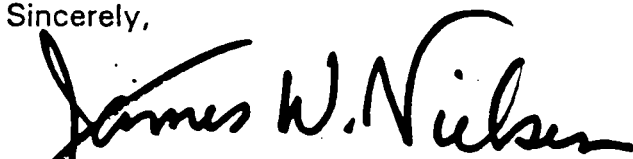
In addition to negotiating new and revising existing international prisoner transfer treaties, the federal government must reimburse states for the costs of the federal government's failure to secure the nation's borders, take all necessary steps to identify criminal aliens for deportation, and fully prosecute those criminal aliens who repeatedly violate U.S. laws by reentering our country after formal deportation proceedings. Specifically, the federal government should:

- Meet its current obligation to the states under federal law to either enter into a contractual agreement to provide compensation to the states for the incarceration of undocumented criminal aliens or take custody of undocumented criminal aliens for the full term of their sentences;
- Place INS officers in state courts to identify illegal alien felons when they are charged so that their agreement to undergo deportation can be a component of a guilty plea;
- Fully fund the Criminal Alien Flagging Program which identifies criminal aliens through a computerized tracking system; and
- Aggressively prosecute all criminal aliens who reenter the U.S. after formal deportation proceedings and seek the maximum sentence in federal prison for reentering this country.

It is the responsibility of the federal government, not state or local government, to enforce international prisoner transfer treaties and the nation's immigration laws. We urge swift and decisive action from Washington to relieve the States of the burden imposed by the federal government's failure to meet its obligation in this area.

Again, thank you for the opportunity to provide our input.

Sincerely,

A handwritten signature in black ink that reads "James W. Nielsen". The signature is written in a cursive style with a large, sweeping initial "J".

JAMES W. NIELSEN
Chairman

APPENDIX B

**(submission from
W. Dexter Douglass, General Counsel
Office of the Governor
State of Florida)**



LAWTON CHILES
GOVERNOR

STATE OF FLORIDA

Office of the Governor

THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

February 24, 1997

Ms. Maureen H. Killion
Senior Associate Director
United States Department of Justice
Criminal Division, Office of Enforcement Operations
P.O. Box 7600
Ben Franklin Station
Washington, D.C. 20044-7600

Dear Ms. Killion:

This letter is in response to your request for assistance with a report to the United States Congress that the Secretary of State and Attorney General are required to submit. In your letter, you requested that the State of Florida provide you with the following information:

1. changes that have been made recently or which should be made in State and local laws, regulations, and policies affecting the identification, prosecution, and deportation of aliens who have committed a criminal offense in the United States; and
2. changes in the treaties that may be necessary to increase the number of aliens convicted of criminal offenses who may be transferred pursuant to the treaties; and
3. the total number of aliens who are incarcerated your state correctional facilities, the number of Mexicans, Canadians, Britons, and Panamanian aliens who appear to be eligible for a treaty transfer under current law, and number of aliens from those four countries that have requested a transfer since Florida began to participate in the program.

I asked Mr. Mark Schlakman, the attorney in charge of immigration issues, to consider your first two requests. Mr. Schlakman informed me that as for the need for the development of "policies affecting the identification and prosecution of aliens," Governor Chiles has already directed that state and local law enforcement agencies coordinate with the Department of Justice and Immigration and Naturalization Services. Mr. Schlakman further informed me that Florida and the Department of Justice have entered into several pilot projects in this regard. Mr. Schlakman stated that at this time there is no compelling need to change any state or local law toward identifying and prosecuting aliens; however, he indicated that Governor Chiles would certainly entertain any such changes if deemed necessary in the future. Next, Mr. Schlakman stated that negotiating to eliminate prisoner consent for the transfer may increase the number of criminal aliens who may be transferred pursuant to the treaties.

Page Two
February 24, 1997
Ms. Maureen H. Killion

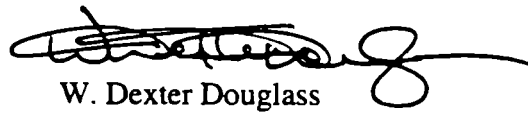
Enclosed you will find a letter from Florida Department of Corrections, which states that as of December 31, 1996, the State of Florida held 5,018 known or suspected aliens. According to the Department of Corrections, the Immigration and Naturalization Service (INS) has confirmed the alien status of 3,050 of the 5,018 inmates. The remaining 1,968 inmates were suspected of being aliens based primarily on their reported birth place outside of the United States. These suspected alien inmates have been referred to INS for determination of their citizenship status. The Department of Corrections' letter also contains a table providing the information concerning the number of aliens from Mexico, Canada, United Kingdom, and Panama. Finally, our records show that since 1989 the number of prisoner transfer requests are as follows:

1. Panama - 2
2. Mexico - 13
3. Canada - 25
4. United Kingdom - 4

We do not have information concerning the number of prisoner transfer requests prior to 1989.

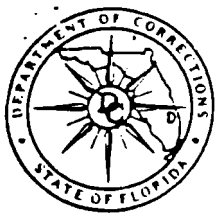
I hope that this information is helpful. If you need any further assistance, please feel free to contact me at (904) 488-3494.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. Dexter Douglass', with a long horizontal flourish extending to the right.

W. Dexter Douglass
General Counsel

WDD/gtc



FLORIDA
DEPARTMENT of
CORRECTIONS

Governor
LAWTON CHILES

Secretary
HARRY K. SINGLETARY, JR.

An Affirmative Action/Equal Opportunity Employer

2601 Blair Stone Road • Tallahassee, FL 32399-2500

February 11, 1997

Ms. Susan Smith
Office of the Governor
Legal Affairs Office
The Capitol
Tallahassee, FL 32399-0001

Dear Ms. Smith:

This letter is in response to your request for information regarding aliens incarcerated in Florida Department of Corrections (FDC) facilities. The data provided below should assist your office in answering the U.S. Department of Justice's request for information for their report to Congress mandated by Section 331 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

On December 31, 1996, FDC held 5,018 inmates known or suspected to be aliens (KSAs). According to our database, the Immigration and Naturalization Service (INS) had, as of that date, confirmed the alien status of 3,050 of these 5,018 inmates. The balance, 1,968 inmates, were suspected not to be U.S. citizens based primarily on their reported place of birth outside the United States. These suspected aliens have been referred to INS for determination of their citizenship status. Our experience working with INS indicates that most of these suspected aliens will eventually be confirmed as aliens.

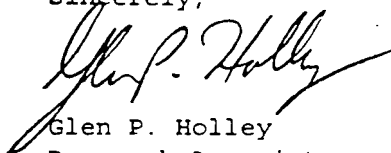
In responses to the Federal government, FDC has routinely reported the total number of KSAs, in this case, 5,018. The table below indicates the number of KSAs who may be eligible for international transfer under the treaty. However, we can not readily provide the number of these who have actually requested treaty transfer.

Country of Origin	Known Aliens	Suspected Aliens	Total
Mexico	259	66	325
Canada	47	30	77
United Kingdom	25	24	49
Panama	13	6	19
Total	344	126	470

Susan Smith
February 11, 1997
Page 2.

For further information, please contact me in the Bureau of Research and Data
Analysis at (904) 488-1801.

Sincerely,



Glen P. Holley
Research Associate

APPENDIX C

**(submission from
Glenn S. Goord, Commissioner
Department of Correctional Services
State of New York)**



STATE OF NEW YORK
DEPARTMENT OF CORRECTIONAL SERVICES
THE HARRIMAN STATE CAMPUS
1220 WASHINGTON AVENUE
ALBANY, N.Y. 12226-2050

GLENN S. GOORD
COMMISSIONER

February 27, 1997

Ms. Maureen H. Killion
Senior Associate Director
U.S. Department of Justice
Criminal Division
Office of Enforcement Operations
P.O. Box 7600
Ben Franklin Station
Washington, D.C. 20044-7600

Dear Ms. Killion:

This is in response to your letter of December 13, 1996, which requested assistance in the preparation of a report mandated by Section 331 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (the Act).

As you may know, New York recently enacted legislation which authorizes the Commissioner of the Department of Correctional Services to convert the sentence of a person serving an indeterminate sentence of imprisonment, to a determinate sentence of imprisonment equal to two-thirds of the maximum or aggregate maximum term imposed. This change in the New York State Correction Law was necessary to make inmates eligible for transfer either to federal custody or to foreign countries under treaties with the United States that provide for the voluntary transfer on the execution of penal sentences.

The purpose of the law is to facilitate the transfer of certain inmates so that they may serve their sentences in their home jurisdictions which have determinate sentencing structures. The statute requires such transfers to be voluntary and specifically prohibits the conversion of an indeterminate sentence when an inmate is serving a sentence with a maximum term of life imprisonment. The Commissioner, or his or her designee, of the Department of Correctional Services has the sole and absolute authority to approve or disapprove the transfer. The statute makes it clear that the inmate has no right to be transferred. See Pelgrim, Practice Commentaries, NYS Correction Law §5(4).

New York also recently enacted legislation which established another early release mechanism for foreign-born inmates. As part of the Sentencing Reform Act of 1995, the Department established the Early Conditional Parole for Deportation Only (ECPDO) Program which allows certain non-violent inmates to be paroled to the Immigration and Naturalization Service (INS) to be deported prior to the completion of the minimum term. The Conditional Parole for Deportation Only (CPDO) Program, which has been in effect since the early eighties, also allows for any alien inmates to be paroled to the INS to be deported but only if the inmate has at least completed the minimum term imposed by the court. Both of these release types require that the inmate have a final order of deportation lodged against them before the Board of Parole can consider them for a conditional release. In addition, it is our understanding that inmates who are released from prison for the purpose of being deported are not subject to additional incarceration when they are delivered to their country of origin.

New York posits the following three concerns for the consideration of the Secretary of State and the Attorney General in formulating their recommendations on ways to increase the effectiveness and use of the treaties:

1) Section 330(b)(2) of the Act states that it is the sense of Congress that "the Secretary of State should give priority to concluding an agreement with any country for which the President determines that the number of aliens described in subsection (a) who are nationals of that country in the United States represents a significant percentage of all such aliens in the United States." As the following figures indicate, the four countries selected for consideration, i.e. Canada, Mexico, Panama and the United Kingdom, are not, relatively speaking, largely represented in New York State prisons.

Using the Department's December 31, 1996, under custody data, 0.6 percent (or 58) of the foreign-born under custody population were from Canada, 2 percent (or 187) from Mexico, and 2.5 percent (or 228) from Panama. In contrast, 30 percent (or 2,732) of the foreign-born under custody population were from the Dominican Republic, 16 percent (or 1,446) were from Jamaica, 7 percent (or 674) from Colombia, and 7 percent (or 669) from Cuba. Therefore, it may be in the Department's interest to have the "sense of congress" expanded to include nationals of countries that represent a "significant percentage of all such aliens in the states most affected by the criminal alien problem." To the Department's knowledge, the United States has not signed treaties for the transfer of foreign nationals with the Dominican Republic, Jamaica or Columbia. Therefore, from New York's perspective, exploration of treaty opportunities with these countries would increase the number of aliens subject to transfer.

Ms. Maureen H. Killion
February 27, 1997
Page 3 of 4

2) Section 330(c) of the Act provides that the transfer of an alien "shall not require the consent of the alien." This is in direct conflict with New York State Correctional Law §5(4) which provides that the inmate's consent is a necessary element of the treaty transfer process.

3) A final concern relates to potential costs to New York State as a result of an expanded treaty transfer program. Is it possible that the state of last residence, as opposed to the Federal Bureau of Prisons, will have to incarcerate American citizens involved in the bilateral treaty transfer program? While the numbers are relatively small right now, if New York were to participate in an expanded treaty transfer program, it would be important to know whether the federal or state government would be responsible for incarcerating American treaty transfer prisoners.

Please note that the following figures which you have requested should be considered as an estimate. Department records simply indicate self-reported country of birth (subsequently verified by INS) as opposed to country of citizenship. Therefore, the Department does not distinguish between inmates born in Panama versus inmates born in the Canal Zone. In similar fashion, the Department does not distinguish between inmates born in the Republic of Ireland versus inmates born in Northern Ireland, which is a part of the United Kingdom. Consequently, none of the 14 Irish-born inmates are included in the listing of inmates born in the United Kingdom

The data provided below represents the under custody population on December 30, 1996.

1) **Total number of aliens incarcerated in NYS:**

Total Under Custody Population:	69,684
Native Born	60,184
Foreign-Born	9,160
Birthplace Unknown	340

2) **Total number of inmates from requested countries who appear to be eligible for a treaty transfer under current law:**

Total	462 (out of 579 inmates from these countries)
Canada	43
Mexico	166
Panama	170
United Kingdom	83

Ms. Maureen H. Killion
February 27, 1997
Page 4 of 4

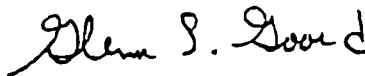
- 3) Total number of aliens from requested countries that have requested a transfer under NYS Correction Law §5(4):

Total	23
Canada	10 (of which 8 were eligible)
Mexico	5 (of which 5 were eligible)
Panama	3 (of which 1 was eligible)
United Kingdom	5 (of which 3 were eligible)

In sum, given the pressure on the Department's capacity combined with potential increased demand due to the anticipated increase in violent felony offenders serving longer terms of incarceration, an expansion of the treaty transfer program may be worth considering. An expanded treaty transfer approach might complement the State's current conditional parole for deportation releases from both a public protection and capacity point of view. However, it will be important to ascertain in advance the level of the federal government's commitment regarding the incarceration of American treaty transfer prisoners. If the federal government intends to pass the cost of incarceration down to the states, then an expansion of the treaty transfer approach may not benefit the Department.

Should you have any further questions or concerns, please do not hesitate to contact me. The Department would appreciate a copy of the report upon its completion.

Sincerely,


Glenn S. Goord
Commissioner

APPENDIX D

**(submission from
Jim Sallans, Assistant General Counsel
Office of the Governor
State of Texas)**



STATE OF TEXAS
OFFICE OF THE GOVERNOR

GEORGE W. BUSH

GOVERNOR

February 19, 1996

Ms. Maureen H. Killion
U. S. Department of Justice
Criminal Division
Office of Enforcement
Washington, D.C. 20530

Dear Ms. Killion:

Governor Bush appreciates the opportunity to provide data on the status of the international Prisoner Transfer Program in Texas. Accordingly, he has asked me to respond to your request for information on the number of foreign nationals in Texas prisons and the number of inmates eligible for transfer under the treaty to the countries of Canada, Mexico, Panama and the United Kingdom.

As of January 31, 1997 the Texas Department of Criminal Justice reported that there were 5912 foreign nationals in Texas prisons. This total includes 9 Canadians, 6 Englishmen, 3865 Mexicans and 18 Panamanians. Of these prisoners, 709 are eligible to be considered for transfer: 7 Canadians, 4 Englishmen, 686 Mexicans and 12 Panamanians. Unfortunately, we do not know the total number of transfer request since Texas began its participation in the program in 1977. Our best estimate would be approximately 4300 total requests. Additionally, we estimate that 300 to 500 prisoners have been transferred from Texas prisons to serve their sentences in the nation of origin.

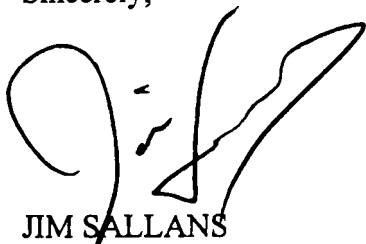
There has not been any recent changes in Texas laws or regulations affecting the identification, prosecution, and deportation of aliens who have committed criminal offenses in Texas. At this time, no changes appear to be contemplated.

In regard to the treaty, we would like to recommend a six month time limit on reapplication from prisoners denied transfers. Currently, there is no limit on the number of times a prisoner can request a transfer. As a result, much time and manpower is expended on reapplication certain to be rejected instead of on meritorious transfer requests.

Please note that I have enclosed a list of all foreign nationals in Texas prisons and a current listing of all prisoners who have made a request for transfer under the treaty.

Please contact me if you have any questions or need additional information. Thank you for requesting our input.

Sincerely,

A handwritten signature in black ink, appearing to be 'Jim Sallans', with a large loop on the left and a sharp, upward-pointing stroke on the right.

JIM SALLANS

JS/low