

Criminal Aliens: INS' Efforts to Remove Imprisoned Aliens Continue to Need Improvement (Letter Report, 10/16/98, GAO/GGD-99-3).

Pursuant to a congressional request, GAO reviewed the Immigration and Naturalization Service's (INS) Institutional Hearing Program's (IHP) performance during 1997, focusing on: (1) the extent to which deportable criminal aliens were included in the IHP; (2) the extent to which INS completed removal hearings for deportable aliens during their time in prison or after their prison release; and (3) whether INS had acted on recommendations that GAO made in its July 1997 testimony.

GAO noted that: (1) INS' performance has shown limited improvement since 1995; (2) in 1995, INS' database of deportable aliens did not have records on about 34 percent of the released inmates included in GAO's analysis who had been identified by the states and the Bureau of Prisons (BOP) as foreign born; (3) about 32 percent of these were subsequently determined by INS' Law Enforcement Support Center (LESC) to be potentially deportable criminal aliens; (4) in 1997, INS had no records on 36 percent of such aliens, 27 percent of whom were determined by LESC to be potentially deportable criminal aliens; (5) although some of these inmates were United States citizens and some were ordered removed through means other than the IHP, a substantial number were aliens on whom INS did not have records; (6) in 1995, about 33 percent of these potentially deportable criminal aliens for whom INS did not have records were aggravated felons at the time of the analysis, as determined by LESC; (7) in GAO's analysis of 1997 data, 63 percent of the potentially deportable criminal aliens for whom INS did not have records were identified by LESC as being aggravated felons; (8) this is important because federal law requires INS to initiate removal proceedings for aggravated felons while they are incarcerated and, to the extent possible, complete deportation proceedings for these felons before their release from prison; (9) in 1995, INS did not complete the IHP before prison release for 57 percent of the potentially deportable criminal aliens for whom INS had records; as a result, INS incurred about \$37 million in avoidable detention costs; (10) in 1997, INS did not complete the IHP for about 50 percent of these aliens; the avoidable detention costs were about \$40 million; and (11) as of September 1998, INS had made limited progress in implementing GAO's recommendations, as follows: (a) INS had begun to establish an automated system for tracking potentially deportable criminal aliens in BOP facilities, but it had not determined whether it will be able to use this system to track potentially deportable criminal aliens in state prison systems; (b) INS had not taken specific actions to ensure that aggravated felons are placed in removal proceedings while they are incarcerated and then taken into custody upon their release from prison; (c) regarding resource issues, INS completed a draft workload analysis model in June 1998 that IHP managers intend to use to determine what resources are needed to accomplish program goals; and (d) INS has taken limited actions to improve its management practices.

----- Indexing Terms -----

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Cover

===== COVER

Report to the Chairman, Subcommittee on Immigration and Claims,
Committee on the Judiciary, House of Representatives

October 1998

CRIMINAL ALIENS - INS' EFFORTS TO
REMOVE IMPRISONED ALIENS CONTINUE
TO NEED IMPROVEMENT

GAO/GGD-99-3

Imprisoned Aliens

(183629)

Abbreviations

===== ABBREV

BOP - Bureau of Prisons
DACS - Deportable Alien Control System
EOIR - Executive Office for Immigration Review
IHP - Institutional Hearing Program
INS - Immigration and Naturalization Service
IRP - Institutional Removal Program
LESC - Law Enforcement Support Center
MOU - memorandum of understanding

Letter

===== LETTER

B-278745

October 16, 1998

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

Dear Mr. Chairman:

This report responds to your July 30, 1997, request that we continue to monitor the Immigration and Naturalization Service's (INS) efforts to initiate and complete removal proceedings\1 for criminal aliens\2 through its Institutional Hearing Program (IHP).\3 In 1997, we testified before your Subcommittee\4 that INS needed to improve its efforts to identify potentially deportable criminal aliens in federal and state prisons and complete the IHP for these aliens before they were released. We based this conclusion on our analysis of data provided by the Federal Bureau of Prisons (BOP) and five states on potentially deportable criminal aliens who were released from their prison systems between April and September, 1995. INS' Executive Associate Commissioner for Programs told the Subcommittee that INS had improved program operations since 1995. In response, the Subcommittee asked us to review program performance during 1997. To accomplish this, we determined

- the extent to which deportable criminal aliens were included in the IHP,
- the extent to which INS completed removal hearings for deportable aliens during their time in prison or after their prison release, and
- whether INS had acted on recommendations that we made in our July 1997 testimony.

The IHP is a cooperative program involving the INS, the Executive Office for Immigration Review (EOIR), and federal and state correctional agencies. It was formally established in 1988 to enable INS and EOIR to complete removal proceedings for criminal aliens while they were still serving their sentences, thus eliminating the need for agents to locate the aliens after their release, and freeing up INS detention space for other cases. With the proceedings complete, expeditious removal of criminal aliens upon completion of their sentence can occur. Federal law requires the Attorney General to initiate and, to the extent possible, complete removal proceedings for aggravated felons\5 before their release from incarceration. INS has been delegated the authority to enforce the immigration laws.\6

\1 Under revised provisions for the removal of aliens established in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104-208, aliens charged by INS as deportable are now placed in "removal" proceedings as opposed to "deportation" proceedings. Proceedings initiated before the effective date of the 1996 Act would be deemed "deportation" proceedings. For consistency, we refer to deportation and removal proceedings as removal hearings or proceedings throughout this report.

\2 For definitions of "alien" and "criminal alien," see appendix I.

\3 In June 1998, the IHP was subsumed under a broader program called the Institutional Removal Program (IRP). The IRP is to capture data for all removals that originate in an institutional setting, including the IHP; reinstatements of prior final removal orders; and administrative removal orders. During the period covered by our review, the IRP was proposed but not official. Therefore, this report provides information almost exclusively on IHP performance.

\4 Criminal Aliens: INS' Efforts to Identify and Remove Imprisoned Aliens Need to Be Improved (GAO/T-GGD-97-154, July 15, 1997).

\5 The definition of "aggravated felony" is contained in the Immigration and Nationality Act, as amended, codified at 8 U.S.C. 1101(a)(43). Examples of crimes that constitute aggravated felonies are murder and certain drug and weapons trafficking crimes.

\6 We focus in this report on INS' responsibilities in implementing immigration laws.

RESULTS IN BRIEF

----- Letter :1

The results of our recent analysis indicate that INS' performance has shown limited improvement since 1995, and we continue to have several of the same concerns about the IHP. In 1995, INS' database of deportable aliens did not have records on about 34 percent of the released inmates included in our analysis who had been identified by the states and BOP as foreign born. About 32 percent of these were subsequently determined by INS' Law Enforcement Support Center (LESC) to be potentially deportable criminal aliens. In 1997, INS had no records on 36 percent of such aliens, 27 percent of whom were determined by LESC to be potentially deportable criminal aliens. Although some of these inmates were United States citizens and some were ordered removed through means other than the IHP, a substantial number were aliens on whom INS did not have records.

In 1995, about 33 percent of these potentially deportable criminal aliens for whom INS did not have records were aggravated felons at the time of the analysis, as determined by LESC. In our analysis of 1997 data, 63 percent of the potentially deportable criminal aliens for whom INS did not have records were identified by LESC as being aggravated felons. This is important because federal law requires INS to initiate removal proceedings for aggravated felons while they are incarcerated and, to the extent possible, complete deportation proceedings for these felons before their release from prison.

In 1995, INS did not complete the IHP before prison release for 57 percent of the potentially deportable criminal aliens for whom INS had records; as a result, INS incurred about \$37 million in avoidable detention costs. In 1997, INS did not complete the IHP for about 50 percent of these aliens; the avoidable detention costs were about \$40 million.

At last year's hearing, the Chairman urged INS to fully implement our recommendations for improving the IHP. As of September 1998, INS had made limited progress in doing so, as follows:

- INS had begun to establish an automated system for tracking potentially deportable criminal aliens in BOP facilities, but it had not determined whether it will be able to use this system to track potentially deportable criminal aliens in state prison systems.

- INS had not taken specific actions to ensure that aggravated felons are placed in removal proceedings while they are incarcerated and then taken into custody upon their release from prison.
- Regarding resource issues, INS completed a draft workload analysis model in June 1998 that IHP managers intend to use to determine what resources are needed to accomplish program goals. INS had not resolved the problem of high attrition among immigration agents, who are considered the backbone of the IHP.
- INS has taken limited actions to address our recommendations to improve its management practices and still needs to improve its management oversight to meet program performance goals.

BACKGROUND

----- Letter :2

Criminal aliens annually cost our criminal justice system millions of dollars, and these aliens are generally perceived to be a serious and growing threat to public safety. In response to these problems, several major laws were passed between 1986 and 1996 that (1) provided for the initiation of removal proceedings for certain criminal aliens while they were incarcerated, (2) expanded the types of crimes for which aliens could be deported, and (3) sought to facilitate the expeditious removal of those aliens found to be deportable.

The Immigration Reform and Control Act of 1986 (P.L. 99-603) requires that INS initiate removal proceedings for criminal aliens as expeditiously as possible after the date of conviction. INS and EOIR established the IHP to meet this requirement. The Anti-Drug Abuse Act of 1988 (P.L. 100-690) defined the crimes of murder and certain drug and weapons trafficking crimes as "aggravated felonies" and required INS to initiate and, to the extent possible, complete removal proceedings for aggravated felons before their release from incarceration. It also required that INS take all such aggravated felons into custody when the aliens are released from prison.

Several laws passed in the 1990s, including the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104-208 (1996 Act), expanded the types of crimes that are considered aggravated felonies. Under the 1996 Act, INS is required to take all aggravated felons and certain other criminal aliens into custody when the aliens are released from prison. Currently, INS may release deportable criminal aliens, including aggravated felons, from custody only if (1) the aliens were lawfully admitted to the United States, or were not lawfully admitted to the United States but the designated country of removal will not accept the aliens, and (2) the aliens satisfy the Attorney General that they will not pose a danger to the safety of other persons or of property and that they are likely to appear for any scheduled proceeding.

In addition to traditional removal proceedings, which require a hearing before an immigration judge, Congress has provided alternative methods for INS to remove certain criminal aliens. The Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322) provided for administrative removals, thereby eliminating the hearing requirement for those aliens who were not lawfully admitted for permanent residence, were convicted of an aggravated felony, and were not eligible for relief from removal. The 1996 Act provided for reinstatement of removal orders (referred to as a "final order of deportation") against aliens who reentered the United States illegally after being removed. The prior order of removal is

reinstated from its original date and is not subject to being reopened or reviewed; the alien is not eligible for and may not apply for any relief.

THE IHP PROCESS

----- Letter :2.1

For criminal aliens who are in prison and have a right to an immigration judge review before being removed, proceedings before an immigration judge are to be conducted through the IHP. As of September 1998, the IHP was carried out at 15 federal and 61 state prisons where INS staff are to conduct interviews and process aliens for removal. Since 1994, INS has developed written IHP enhancement plans for BOP and states with large foreign-born inmate populations to enhance the processing of aliens in prisons. The plans, which varied among BOP and the states, included such enhancements as reducing the number of prison locations that INS staff had to visit to process criminal aliens and increasing the number of INS staff who process IHP cases. For example, INS signed a memorandum of understanding (MOU) with BOP to enable INS staff to process a large portion of the foreign-born inmates by visiting 11 federal institutions that were designated as IHP sites instead of visiting more than 70 federal institutions. At the state level, INS' agreement with Texas was to enhance the IHP process by establishing one state prison where all of the foreign-born inmates would be identified and processed for hearings and from which inmates would be released into INS custody.

The IHP's goal is for INS and EOIR to complete removal proceedings for all criminal aliens while they are still serving their sentences and expeditiously remove aliens deemed deportable upon their release from prison. This action would eliminate the need for INS to take aliens into long-term custody upon their release and would free up INS detention space for other cases. Aliens who do not complete the IHP are often taken into INS custody after prison release to complete the hearing process while in INS detention, and these aliens can be ordered removed by an immigration judge during the detention period.

INS agents generally rely on BOP and state corrections personnel to notify them of incoming prisoners who state they are foreign born or whom corrections personnel identify as foreign born. According to corrections personnel, they typically first learn that prisoners are foreign born during prison intake procedures, which include interviews with and record checks on arriving inmates. The IHP process begins when INS agents screen foreign-born inmates to determine their deportability. If the INS agent determines that an inmate has committed a crime for which he or she can be deported, the agent is to file a "detainer" with corrections officials. A detainer in a prisoner's record signifies that he or she is to be released to INS custody upon completion of the prison sentence.

The information that INS agents gather on criminal aliens during the initial phase of the IHP process is to be used to prepare documents notifying the aliens of INS' intention to deport them through removal proceedings, administrative removal, or reinstatement of a prior order. INS attorneys are to review the notices for legal sufficiency, and, for removal proceeding cases, INS files the cases with EOIR and serves the aliens with a document charging them with having committed a deportable offense. At that point, the aliens are included in the IHP.

EOIR is to schedule an initial hearing and notify the alien. The purpose of the initial hearing is to explain the process to the alien, resolve evidentiary issues, prepare a list of desired

witnesses, and address the issue of legal representation for the alien.\7 The alien may immediately accept an order for deportation. Alternatively, if the alien contests removal, a subsequent hearing may be held, during which witnesses may be called and evidence may be entered supporting INS' charge of deportability and/or the alien's claim for relief from removal. After all of the evidence is presented and appeals processes, if any, are completed, an immigration judge renders a final decision. If the alien is ordered removed, a deportation order is to be served on the alien. Before a final decision on the case, INS is required to take certain deportable aliens into custody, even if the removal proceedings have not been completed.\8 Those in removal proceedings who receive a final order of deportation, as well as those who are to be deported through administrative and reinstatement orders, are to be held in INS detention until they are removed from the United States.

Appendix II contains a flowchart of the IHP process.

 \7 The immigration judge is to inform the alien of his or her right to be represented by counsel at no cost to the government. The judge also is to advise the alien of the availability of free legal service programs and ensure that he or she has been given a list of such programs.

\8 During the time of our review, INS was required to take into custody criminal aliens convicted of aggravated felonies and certain other criminal aliens. These criminal aliens may be released by INS under certain circumstances.

OBJECTIVES, SCOPE, AND METHODOLOGY

----- Letter :3

To assess the performance of INS' efforts to deport criminal aliens, we analyzed data on 19,639 individuals who were identified by BOP and four states\9 as foreign born and released from prisons between January 1 and June 30, 1997. Our work was designed to determine

- the extent to which deportable criminal aliens were included in the IHP,
- the extent to which INS completed removal hearings for deportable aliens during their time in prison and after their release, and
- whether INS had acted on the recommendations that we made during our July 1997 testimony.

Also, for this report we compared, where appropriate, IHP performance in 1997 to the 1995 data on foreign-born inmates presented in our IHP testimony. We generally used the same methodology for our data collection and analysis that we used for our July 1997 testimony. However, for our 1995 sample we were able to conduct a 16- to 22-month follow-up on the disposition of released inmates. For the 1997 sample, time constraints limited us to doing a 9- to 15-month follow-up. Because 9 months was the common amount of time that all inmates in both samples could be followed up, comparisons between the 1995 and 1997 results are based on a 9-month follow-up period from the time an inmate was released.

We concentrated primarily on the activities of INS--as opposed to EOIR--because INS has the lead role in identifying incarcerated

criminal aliens, determining these aliens' deportability, initiating removal proceedings, and removing aliens from the United States. We focused on IHP activities in the federal BOP and in California, Florida, New York, and Texas, which are four of the five states that were included in our July 1997 IHP study. To identify which released inmates were in or had completed removal proceedings, we asked EOIR to do a computer match of EOIR data with data from BOP and four states on foreign-born aliens released in the first half of 1997. To gather data on aliens released to INS custody and removed, we asked INS to match data for cases with identifying alien numbers (A-number) from BOP and the four states against INS' Deportable Alien Control System. We asked LESC to query several INS and criminal databases to determine the immigrant and criminal status of released inmates who did not have A-numbers and those who were not matched through EOIR or INS databases.

To assess INS' efforts to implement the five recommendations that we made in our July 1997 testimony, we interviewed INS headquarters officials and reviewed available documentation. (See app. III for a detailed description of our objectives, scope, and methodology.)

Our work was conducted between November 1997 and September 1998 in accordance with generally accepted government auditing standards.

 \9 We eliminated Arizona from our current study because the Subcommittee request letter specified that we focus on BOP and the four selected states. Arizona accounted for a small number (626 of 17,320) of the total cases in our 1995 analysis.

INS STILL FAILED TO IDENTIFY
 ALL DEPORTABLE CRIMINAL ALIENS,
 INCLUDING AGGRAVATED FELONS

----- Letter :4

As was the case when we testified before your Subcommittee in July 1997, we again found that INS had not identified all potentially deportable imprisoned criminal aliens. As a result, INS did not fully comply with the legal requirements that it (1) place criminal aliens who had committed aggravated felonies in removal proceedings while they are incarcerated or (2) take those aggravated felons into custody upon their release from prison.

As we reported in our July 1997 testimony, our analysis of 1995 data on 17,320 foreign-born inmates released from BOP and five state prisons, showed that INS and EOIR did not have records on 5,884 (34 percent) of the released inmates. Therefore, INS was unable to determine whether any of these released inmates were potentially deportable criminal aliens. Of the 5,884 released inmates, INS' LESC identified 1,899 (32 percent) as potentially deportable criminal aliens on the basis of their immigration status and the nature of their crime. Furthermore, LESC identified 635 (33 percent) of the 1,899 potentially deportable criminal aliens as having committed crimes that were defined in immigration law as aggravated felonies at the time of LESC's determination. Further review by INS found that 333--more than 50 percent--of the 635 cases were criminal aliens who were potentially eligible for removal; in 45 cases, INS was unable to determine whether the alien was potentially removable. In the remaining 257 cases, INS determined that the inmates were either United States citizens, were deceased, had been granted relief from deportation, or were not released from incarceration. We did not assess the reason for the discrepancy in the two determinations.

Our current analysis of data on 19,639 foreign-born inmates who were released from BOP and four state prisons between January 1 and June 30, 1997, showed that INS and EOIR did not have records on 7,144 (36 percent) of the released inmates. We requested that LESC conduct a search to determine whether any of these released inmates were potentially deportable criminal aliens.\10 Of the 7,144 released inmates, LESC identified 1,903 (27 percent) as potentially deportable criminal aliens on the basis of their immigration status and the nature of their crime. Although aliens meeting these criteria are to be screened by INS; assessed as to their removability; and, as appropriate, put into removal proceedings as expeditiously as possible following their convictions, neither INS' nor EOIR's databases indicated that these actions occurred for any of these aliens either while they were in prison or after they were released.

Under the law, INS is required to initiate removal proceedings against aggravated felons while they are in prison and take them into custody upon their release. LESC identified 1,198 (63 percent) of the 1,903 potentially deportable criminal aliens as aggravated felons. Compared to our 1995 results on released foreign-born inmates for whom INS and EOIR did not have records, our 1997 results indicate an increase in aggravated felons. Specifically, for inmates with no records whom LESC determined to be potentially deportable criminal aliens, LESC further found that 33 percent of the 1995 sample were aggravated felons at the time that LESC made its determination, and 63 percent of the 1997 sample were aggravated felons. According to INS, this increase may be due to the additional crimes classified as aggravated felonies in the 1996 Act.

According to the INS and EOIR databases, none of the 1,903 potential deportable criminal aliens had been in removal proceedings while they were in prison or afterward, had been taken into INS custody, or had been deported. LESC provided information on the postrelease criminal activities of the 1,198 aggravated felons as follows:

- 80 of the 1,198 criminal aliens were rearrested,
- 19 of the 80 aliens were charged with committing additional felonies, and
- 15 of the 19 aliens were convicted of the felony charges.

We asked LESC to provide us with information on the nature of the crimes for which the 80 criminal aliens were rearrested. These included crimes such as assault, robbery, and drug offenses. The types of felonies for which the 15 aliens were convicted included crimes mostly involving drug possession, burglary, theft, and robbery.

\10 LESC provided information on 6,579 inmates. Approximately 140 files from Florida could not be searched because of insufficient information on the inmates, and 425 files from New York were not completed in time to be included in our analysis. In addition, we identified duplicate inmate records to the extent that we could and eliminated them from our analysis.

INS DID NOT COMPLETE THE IHP
FOR ABOUT ONE-HALF OF THE
RELEASED CRIMINAL ALIENS,
RESULTING IN AVOIDABLE
DETENTION COSTS AMOUNTING TO
MILLIONS OF DOLLARS

----- Letter :5

We performed an analysis of data on foreign-born inmates who, according to BOP and the corrections departments of the four states we reviewed, were released from their prison systems during the first 6 months of 1997 and, according to INS and EOIR data, were potentially deportable.¹¹ There were 12,495 released inmates in this population. We found that about 45 percent of these inmates were released from prison with a final deportation order (having completed the IHP), about 3 percent were released from prison without a deportation order but with INS' having completed the removal hearing process, and about 36 percent were released from prison before INS completed the process. For the remaining 15 percent of the inmates, there was no indication that hearings were completed either before or after prison release. Figure 1 provides information on the disposition of all the cases that were indicated by INS and EOIR as potentially deportable during 6-month periods in 1997 and 1995.

Figure 1: Disposition of
Potentially Deportable Inmates
Released From BOP and Selected
States' Prisons During 6-Month
Periods in 1997 and 1995

(See figure in printed
edition.)

Note: Percentages may not add to 100 due to rounding.

Source: GAO analysis of BOP and state data.

Compared to our analysis of 1995 data, when INS completed the IHP before release from prison for 43 percent of the 11,436 released inmates who were deemed potentially deportable, INS completed the IHP for 48 percent¹² of such inmates released during the first half of 1997. Furthermore, 40 percent of the 1995 cases completed the IHP with a final deportation order compared to 45 percent of the 1997 cases. Conversely, the percentage of cases completing the hearing process after prison release decreased from 41 percent in 1995 to 36 percent in 1997. Thus, INS made some improvement in completing the IHP for incarcerated aliens; but for the majority of cases, INS still did not complete the hearing process before prison release.

For two states, California and New York, IHP completion rates before prison release were generally the same in our analyses of 1995 and 1997 data. In Texas, IHP completions had increased from 21 percent to 49 percent. In BOP, IHP completions had increased from 33 percent to 48 percent. INS officials told us that they believed these increases could be attributed to enhancements made in 1996 to the IHP in this state and BOP. Our analyses of 1995 and 1997 data showed that completion of IHP hearings in Florida declined from 72 percent to 59 percent. According to INS officials, the 1995 data may reflect an artificially high number of IHP completions due to an April 1994 MOU between Florida and INS. Under the MOU, the Florida Department of Corrections and INS were to establish a demonstration project to identify alien inmates who could have their sentences commuted and subsequently be excluded or deported. According to INS officials, in fiscal year 1995, about 500 alien inmates were identified as deportable through this project. The project was designed to expedite the deportation of certain criminal aliens to help relieve overcrowding in Florida's correctional institutions. (App. IV shows the disposition of inmates released from BOP and four state prison facilities in greater detail.)

Similar to our 1995 analysis, our current analysis of the 12,495 potentially deportable cases for which INS had records showed that INS was able to quickly remove those deportable aliens who had completed the IHP with final deportation orders before they were released from prison--75 percent were removed from the United States within 1 week of their prison release in both 1995 and 1997. During both time periods, at least 92 percent of such cases were removed in less than 1 month. Our analyses also showed that of the aliens for whom INS started removal hearings before prison release and completed the hearings after release, 68 percent of the aliens were removed in less than 1 month in 1995, compared to 66 percent in 1997. However, there was a notable improvement in removal time for aliens for whom INS started and completed the hearing process after their release from prison. Specifically, in 1995, 36 percent of such aliens were removed within 1 month, compared to 59 percent in 1997. INS and EOIR officials said that the improvement may be due to an increase in the immigration law judge time spent at INS detention facilities since 1995. The INS officials said that the improvement also may be attributable to their ability to obtain travel documents more readily than in the past from some countries that had been considered difficult. (App. V shows the time that elapsed between release from prison and deportation for those aliens who were removed.)

Not completing removal proceedings during incarceration means that INS has to use its limited detention space to house released criminal aliens rather than using the space to detain other aliens. INS has acknowledged that it incurs detention costs for housing these aliens, costs that our analyses showed could be avoided. Our analysis of fiscal year 1995 data showed that detention costs of about \$37 million could have been avoided for criminal aliens who completed the hearing process after prison release and were deported within 9 months of release. Our analysis of fiscal year 1997 data showed that INS could have avoided about \$40 million in detention costs for such cases.\13

 \11 INS' data on the IHP were limited because INS had not identified all of the individuals who were foreign-born inmates in the BOP and state prison systems and did not maintain a database of these individuals that would enable INS to routinely track the IHP status of all potentially deportable inmates. Therefore, as was the case in fiscal year 1995, INS could not readily determine where individuals were in the IHP process, nor could it readily provide summary information on the number of criminal aliens that had committed aggravated felonies.

\12 In addition to removal proceedings, our analysis found that INS had issued 1,668 administrative and reinstatement final orders during the first 6 months of 1997. As previously mentioned, legislation authorized INS to use administrative removals in 1994 and reinstatement of removal orders in 1996. To make our 1995 and 1997 results comparable, we did not include these removals in our analysis of IHP removal proceedings. If we were to assume that the 1,668 administrative and reinstatement final orders were issued before prison release, and if we had included these removals in our analysis as having completed the IHP, INS would have completed the IHP for 54 percent of the inmates released from prison. However, INS had no data on how many of these orders were issued before prison release. Therefore, we estimated that IHP completions did not exceed 54 percent.

\13 See appendix VI for a discussion of how we estimated these detention costs.

INS HAD NOT FULLY IMPLEMENTED
OUR 1997 RECOMMENDATIONS FOR
PROGRAM IMPROVEMENTS

----- Letter :6

We concluded in our July 1997 testimony that if fully implemented, the IHP would be an effective way to achieve the requirements of the law regarding the timely deportation of eligible criminal aliens. We also stated that INS had not processed aliens in a way that would ensure optimum performance results and that INS did not have a systematic basis for determining the performance results it could accomplish with various resource levels. We recommended steps that INS could take to improve the operations of and outcomes from the IHP to include establishing a nationwide database, establishing controls to ensure that proceedings for aggravated felons are initiated before release from prison, addressing certain resource issues, and improving management oversight. In a December 1997 letter to your Subcommittee, INS stated that it planned to act on our recommendations. INS has taken some action on most of the recommended program improvements; however, none of these actions had been fully implemented as of September 1998.

INS IS PILOTING A BOP
NATIONWIDE DATABASE

----- Letter :6.1

We stated in our July 1997 testimony that INS needed better information about prison inmates--more specifically, information about which inmates are eligible for the IHP and which of these inmates have been and have not been included in the program. Our work at that time showed that INS' databases did not contain complete and current information on the IHP status of individual foreign-born inmates at any given point in time. INS could use this information to determine which of the released foreign-born inmates had been screened for the IHP, identified as deportable, or placed in the hearing process. We recommended that the Commissioner of INS establish a nationwide data system containing the universe of foreign-born inmates reported to INS by BOP and the state departments of corrections and use this system to track the IHP status of each inmate.

In a December 1997 letter responding to our recommendations, INS told your Subcommittee that it recognized the need to automate its processes for identifying and tracking its processing and removal of criminal aliens. INS has begun an effort to establish an automated federal IHP tracking system that is to capture information, such as name, date of birth, country of birth, and A-number, if available, on foreign-born inmates in BOP correctional facilities. This information is to be used to perform record checks in other databases to make a determination on an alien's removability. As currently designed, the tracking system does not include information on removal hearings, nor does it capture data on whether aliens have been removed. According to INS, it plans to augment the tracking system by making it compatible with another system that is to include this information. We did not assess the feasibility of making the systems compatible. Also, INS officials told us that the plan is to expand this system to include state IHP programs, but no action had been taken as of June 1998 to determine whether the tracking system could be adapted to state data systems.

INS is in the process of developing, testing, and implementing the tracking system at federal facilities. According to an INS official, the tracking system was pilot tested at INS' Oakdale, LA, federal IHP

site between March and June, 1998. The official also said that the tracking system was implemented at three federal IHP locations, including Oakdale, as of the end of fiscal year 1998, and that INS expects to have the tracking system operational at all remaining federal IHP locations during fiscal year 1999.

According to INS' project manager, \$1.6 million was allocated in fiscal year 1998 to develop the tracking system and make it operational at four federal locations. Funding levels for fiscal year 1999 were still tentative as of September 1998 because INS' appropriations bill had not been enacted.

INS HAD NOT ESTABLISHED
CONTROLS TO ENSURE THAT
PROCEEDINGS FOR AGGRAVATED
FELONS ARE INITIATED BEFORE
PRISON RELEASE

----- Letter :6.2

The law requires INS to take certain actions regarding criminal aliens who have been convicted of aggravated felonies beyond those actions required for other criminal aliens. As previously mentioned, INS is required by law to initiate and, to the extent possible, complete removal proceedings against aggravated felons while they are incarcerated and to take these felons into custody upon their release. Our work showed, as it did in July 1997, that INS had not complied fully with the required provisions of the law.

In our July 1997 testimony, we recommended that the Commissioner of INS give priority to aliens serving time for aggravated felonies by establishing controls to ensure that these aliens (1) are identified from among the universe of foreign-born inmates provided by BOP and the states, (2) are placed into removal proceedings while in prison, and (3) are taken into custody upon their release. In its December 1997 letter to the Subcommittee, INS stated that a control system to single out aggravated felons as a unique group was not needed since INS should be screening all foreign-born inmates as they enter the prison systems.

We asked INS to explain our finding that aggravated felons had been released from prison into communities without INS' having identified them. According to INS officials, to provide an accurate accounting for these cases, they would need to conduct individual case reviews. They thought the aggravated felons in our sample may not have been identified by INS agents for two reasons. First, the officials said that a backlog exists for cases from previous years when INS did not screen all foreign-born inmates when they entered the prison systems. INS had each of its regional offices submit a plan to address the backlog in the seven states with the highest concentration of foreign-born inmates.\14

According to INS, these backlog cases are to be addressed by December 1998. Second, the officials said that resources for the IHP are inadequate to address the increasing number of aliens being incarcerated. If IHP resources are inadequate, we believe that the risk of aggravated felons being released into communities will persist unless INS establishes controls to ensure that these felons are identified.

\14 This action was taken in response to a September 1995 Department of Justice, Office of Inspector General, report recommending that INS eliminate the current backlog of unprocessed foreign-born inmates in

state prisons, giving first priority to the seven states with the highest concentrations of foreign-born prison inmates. The seven states are Arizona, California, Florida, Illinois, New Jersey, New York, and Texas.

RESOURCE ISSUES RELATED TO
THE IHP HAD NOT BEEN FULLY
ADDRESSED

----- Letter :6.3

INS received additional funding for the removal of criminal and noncriminal deportable aliens in fiscal year 1997, which included the IHP, but did not request or receive additional funding in fiscal year 1998. To address the need for more IHP resources, INS requested \$31 million for the IHP in the fiscal year 1999 President's budget to aid in INS' efforts to identify criminal aliens for removal. In the budget request, INS stated that additional program enhancements, such as increased investigations and detention staff, video capabilities for conducting hearings, and detention vehicles to transport aliens, are required to address the growth of incarcerated criminal alien populations at existing program sites and to expand into new locations where prison populations are growing.

In our July 1997 testimony, we reported to your Subcommittee that INS had established IHP performance goals without having a systematic basis for determining the performance results it could accomplish with various resource levels. We reported that INS had not developed a uniform method for projecting the resources it would need--taking into consideration the level of cooperation from BOP and the states--to achieve its overall goal of completing removal proceedings for every eligible foreign-born inmate before release from prison.

In our July 1997 testimony, we recommended that the Commissioner of INS (1) develop a workload analysis model to identify the IHP resources needed in any period to achieve overall program goals and the portion of those goals that would be achievable with alternative levels of resources and (2) use the model to support its IHP funding and staffing requests. Such a model was to consider several factors, including the number of foreign-born inmates, number of prisons that must be visited, number and types of IHP staff, length of time to process cases, and travel time and costs. In June 1998, a draft workload analysis model was submitted to the Office of the Executive Associate Commissioner for Field Operations. The model contains a detailed analysis of the tasks involved in identifying, processing, detaining, and removing incarcerated aliens and the average amount of time associated with each task. INS staff visited 23 locations in 5 states and 3 federal facilities to develop the model. As of September 1998, the draft workload analysis model had not been approved; thus, INS had not yet used it to make determinations about IHP funding and staffing needs.

We also reported in our July 1997 testimony that INS had a 30-percent attrition rate for immigration agents, which was significantly higher than the 11-percent average attrition rate for all INS staff. We recommended that the Commissioner identify the causes of immigration agent attrition and take steps to ensure that staffing was adequate to achieve IHP program goals. INS officials told us that the attrition rate for immigration agents during fiscal year 1997 was 32 percent; thus, the problem had not been resolved. INS has identified what it believes are the causes for the high attrition rate but has not determined the appropriate solution to the problem. According to INS officials, one reason for the high attrition rate was that immigration agents who were hired to staff the IHP often left for potentially better paying positions within INS, such as the special

agent position. Benefits and advancement opportunities for immigration agents are limited, but these agents often possess many of the qualifications required for INS positions with greater pay and advancement potential. Thus, immigration agents are competitive for filling vacancies in those potentially better paying positions. The IHP workload analysis plan previously mentioned included a recommendation that a group be formed to conduct an in-depth review of the immigration agent position situation. As part of the IHP workload analysis, INS is also considering several options for staffing the IHP, one of which would be to eliminate the immigration agent position and use deportation officers to process IHP cases.

BETTER MANAGEMENT OVERSIGHT
STILL NEEDED

----- Letter :6.4

We reported to your Subcommittee in July 1997 that INS' top management (1) had not formally communicated to the district directors how additional staff (e.g., newly hired immigration agents) should be used in the IHP; (2) did not ensure that specific operational goals were established for each INS district director with IHP responsibilities; and (3) did not respond with specific corrective actions when it became apparent that the program would not achieve its goals for fiscal year 1996.

Therefore, we recommended that INS establish and effectively communicate a clear policy on the role of special agents in the IHP (e.g., whether immigration agents were replacements for or supplements to special agents). We also said that INS should use a workload analysis model to set IHP goals for district directors with IHP responsibilities. Furthermore, we said that if it appeared that IHP goals would not be met, INS should document actions taken to correct the problem.

In its December 1997 letter to your Subcommittee, INS stated that the role of special agents in the IHP had been communicated to regional and district directors. The Office of Field Operations sent a memorandum to field managers in October 1997 to clarify the use of special agents in the IHP and define the amount of time special agents could devote to IHP work on the basis of their grade level. However, the memorandum did not clarify the issue that we had raised in our July 1997 testimony, that is, whether immigration agents were replacements for or supplements to special agents in doing IHP work. INS is currently reviewing the structure and staffing of the IHP and the results of this review may affect the role of immigration agents.

INS stated in its December 1997 letter that it establishes regional goals that represent a composite of the individual district's goals. An INS official told us that INS management prefers that the regional directors have the flexibility to manage the district goals and resources. Our current work found that INS had not set IHP goals for district directors in either fiscal year 1997 or 1998. Furthermore, for fiscal year 1998, INS did not set goals for regional directors. Servicewide IHP goals were not communicated to regional directors until February 1998. According to an INS official, the goals were not finalized until February because INS' position allocations for fiscal year 1998 were not completed until December 1997, and the agency was trying to transition from its former priorities management system to a results-oriented system so that it would be more consistent with the requirements of the Government Performance and Results Act.\15

In its December 1997 letter to the Subcommittee, INS did not specifically address the recommendation to document actions taken by

the agency when it appeared that IHP goals would not be met. INS set a fiscal year 1998 servicewide goal to remove 16,800 criminal aliens through the IHP. At its May 1998 midyear review to assess whether targeted goals were being met, INS realized that it might have difficulty meeting this goal. Following the midyear review, the Commissioner of INS requested that the regional directors develop plans for increasing criminal removals for the remainder of the fiscal year and submit these plans to the Office of Policy and Planning. According to an INS official, the plans were to be reviewed by the Office of Policy and Planning and were to be used as a benchmark for the August 1998 review of the IHP goals.

\15 The Government Performance and Results Act of 1993 (P.L. 103-62) was enacted to improve the efficiency and effectiveness of federal programs by establishing a system to set goals for program performance and to measure results.

CONCLUSIONS

----- Letter :7

INS has shown limited improvement in its IHP performance on the basis of our analysis of its 1997 program performance. This, coupled with INS' limited progress in fully implementing our recommendations, suggests that INS still does not know whether it has identified all potentially deportable criminal aliens in the BOP and state prison systems. More importantly, INS still is not doing all it should to ensure that it is initiating removal proceedings for aggravated felons and taking the felons into custody upon their release from prison. We continue to believe that the recommendations we made in our 1997 testimony are valid and that INS should fully implement them as soon as possible.

AGENCY COMMENTS

----- Letter :8

We provided INS with a draft of the report and on September 11, 1998, we met with INS' Executive Associate Commissioner for Field Operations and other officials from INS' Offices of Field Operations, General Counsel, Policy and Planning, Internal Audit, and Congressional Relations to discuss its contents. They generally concurred with our findings and provided technical comments that we incorporated where appropriate.

----- Letter :8.1

We are sending copies of this report to the INS Commissioner, the Attorney General, the Chairmen and Ranking Minority Members of the House and Senate Appropriations Committees, the Chairman and Ranking Minority Member of the Senate Subcommittee on Immigration, and the Director of the Office of Management and Budget. Copies will also be made available to others upon request.

Major contributors to this report are listed in appendix VII. If you have any questions about this report, please contact me on (202) 512-8777.

Sincerely yours,

Norman J. Rabkin
Director, Administration

of Justice Issues

DEFINITIONS OF "ALIENS" AND
"CRIMINAL ALIENS"

===== Appendix I

ALIENS

----- Appendix I:1

Aliens are individuals who are not citizens of the United States, regardless of whether their immigration status is legal or illegal. Legal aliens include (1) immigrants who entered the country with valid visas and were later granted resident status by INS and (2) nonimmigrants, such as students, tourists, temporary workers, and business visitors who do not violate the conditions of their visas. Illegal aliens include those who (1) enter the country without visas or passports; (2) do not present themselves for inspection by INS; (3) enter the country using fraudulent documents; and (4) are nonimmigrants who have violated a condition of their visas, such as remaining in the country beyond the authorized period of time.

CRIMINAL ALIENS

----- Appendix I:2

The term criminal aliens, as used in this report, includes all aliens, legally or illegally residing in the country, who have been convicted of a crime. In some cases, the aliens' crime may not warrant removal.

THE IHP PROCESS

===== Appendix II

Figure II.1: Flowchart of INS'
IHP Process for Removal
Proceedings

(See figure in printed
edition.)

(See figure in printed
edition.)

Note: INS may serve some aliens with a charging document that notifies them that they are to be removed under an administrative or reinstatement of a prior removal order. These types of removals do not require a hearing and are not filed with EOIR.

OBJECTIVES, SCOPE, AND METHODOLOGY

===== Appendix III

Following our testimony in July 1997 on the Immigration and Naturalization Service's (INS) Institutional Hearing Program (IHP), the Chairman of the House Subcommittee on Immigration and Claims requested that we continue to monitor the IHP and evaluate its effectiveness. To accomplish this, we determined

-- the extent to which deportable criminal aliens were included in

the IHP,

- the extent to which INS completed removal hearings for deportable aliens during their time in prison or after their prison release, and
- whether INS had acted on recommendations that we made in our July 1997 testimony.

We analyzed IHP results for the federal Bureau of Prisons (BOP) and the corrections systems of four states--California, Florida, New York, and Texas. We analyzed these locations because they were included in our previous 1997 testimony regarding INS' IHP efforts and they were of specific interest to the requester.

To determine whether INS had improved its IHP performance, we gathered and analyzed data for inmates released from January to June, 1997, as a comparison to our past IHP analysis for inmates released from April to September, 1995. We concentrated on INS--as opposed to the Executive Office for Immigration Review (EOIR), which makes adjudicative decisions regarding deportability--because INS has the lead role in identifying incarcerated criminal aliens, determining their deportability, and initiating removal proceedings.

We sought to determine the extent to which IHP-eligible inmates were placed into removal proceedings, completed the IHP process, and were removed from the United States upon release from prison. To answer these questions, we obtained data from BOP and correctional departments in four states on all foreign-born inmates released from January through June, 1997. The data from the January to June, 1997, period are considered to be representative of the entire year. We did not determine the completeness or accuracy of the lists of foreign-born inmates provided to us. We asked INS to conduct a computer match of the records with identifying alien numbers (A-number) against information in its Deportable Alien Control System (DACS) to identify those released foreign-born inmates who were taken into INS custody upon their release from prison, were detained, or were removed from the United States.

For this review, we did not independently assess the reliability of DACS data, although we did ask INS about what, if any, quality controls and procedures were used to ensure the reliability of those data elements that we used in this review. The data elements included whether the alien (1) was taken into custody or detained, (2) was issued a final deportation order, and (3) was removed. INS personnel who operate and manage the DACS database responded that both the accuracy and completeness of these data elements in DACS are good. They stated that supervisors perform random checks on DACS data each time an officer submits a case for review. Further, they reported that all of these data elements are entered into DACS, but that depending on the complexity of the case, there may be some lag time between the occurrence of events and input of data into DACS.

We also asked EOIR to conduct a computer match of the records against information in its Automated Nationwide System for Immigration Review to identify those released foreign-born inmates who had been in removal proceedings. Again, we did not independently assess the database's reliability, but we asked EOIR about what, if any, quality controls and procedures were used to ensure the reliability of those data elements that we used in this review. The data elements included (1) whether the alien was placed in removal proceedings and (2) the outcome of the proceedings. EOIR personnel who operate and manage the agency's automated system responded that the accuracy and completeness of the data fields are superior, with error rates being less than 1 percent. They stated that reports to verify data

accuracy are run daily, weekly, and monthly and that EOIR staff are held to high performance standards with respect to data integrity.

From these data matches, we determined for BOP and four states how many of the foreign-born inmates were included in and completed the IHP before prison release, how many completed removal proceedings within 9 months after release, and how many had started but had not completed proceedings within 9 months after their release from prison. For those who were issued a final order of deportation, we were able to determine how many had been removed from the United States through March 1998. We selected the January through June, 1997, time frame because we wanted data that were relatively recent and at the same time sufficiently in the past so that we could follow up on released criminal aliens and determine whether they had completed removal proceedings and had been removed from the United States.

In addition, we sought to compare IHP results for January to June, 1997, with the results of our previous analysis of April to September, 1995, data. We analyzed the 1995 and 1997 data the same to be able to directly compare program performance. To make the information comparable, we used a follow-up period of 9 months after prison release for all inmates in the 1995 and 1997 samples. We did this because 9 months was the maximum amount of time that all inmates in both samples had the opportunity to be followed up.

Of the 19,639 foreign-born released inmates, 7,144 were not in either INS' or EOIR's database. We sought to determine the extent to which this sizable, unmatched group consisted of (1) U.S. citizens who were not candidates for the IHP or (2) criminal aliens who should have been, but were not, included in the IHP and who were released from prison without being taken into INS custody.

To determine the composition of the group of 7,144 unmatched cases, we asked the Law Enforcement Support Center (LESC)--an INS unit that conducts database searches for local law enforcement agencies to determine whether arrested individuals are criminal aliens--to individually search the 7,144 unmatched cases\16 with information contained in 6 INS databases,\17 the Federal Bureau of Investigation's National Crime Information Center, and state criminal history databases. The results enabled us to determine (1) how many individuals were U.S. citizens and, therefore, ineligible for the IHP; (2) how many individuals were deportable criminal aliens who were released from prisons; (3) whether any identified criminal aliens had been convicted of committing an aggravated felony; and (4) whether any identified criminal aliens had committed additional crimes, including aggravated felonies, since their prison release.

To determine what actions INS took to improve the effectiveness of the IHP, we reviewed INS' planning documents pertaining to the removal of criminal aliens and the IHP's annual goals. We interviewed INS officials about actions the agency had taken or planned to take to implement our recommendations for improving IHP performance results.

\16 LESC provided information on 6,579 inmates. Approximately 140 files from Florida could not be searched because of insufficient information on the inmates, and 425 files from New York were not completed in time to be included in our analysis. In addition, we identified duplicate inmate records to the extent that we could and eliminated them from our analysis.

\17 The six INS databases searched by LESC were (1) the Central Index

System, (2) the Computer-linked Application Information Management System, (3) the Deportable Alien Control System, (4) the National Automated Immigration Lookout System II, (5) the Nonimmigrant Information System, and (6) the Student and Schools System.

DISPOSITION OF POTENTIALLY
DEPORTABLE INMATES RELEASED FROM
BOP AND SELECTED STATES' PRISONS
DURING 6-MONTH PERIODS IN 1997 AND
1995

===== Appendix IV

Figure IV.1: Disposition of
Potentially Deportable Inmates
Released From BOP and Four
States' Prisons During a
6-Month Period in 1997
(Jan.-June)

(See figure in printed
edition.)

Note: Percentages may not add to 100 due to rounding.

Source: GAO analysis of BOP and state data.

Figure IV.2: Disposition of
Potentially Deportable Inmates
Released From BOP and Five
States' Prisons During a
6-Month Period in 1995
(Apr.-Sept.)

(See figure in printed
edition.)

Note: Percentages may not add to 100 due to rounding.

Source: GAO analysis of BOP and state data.

TIME FROM RELEASE TO DEPORTATION
FOR ALIENS RELEASED FROM BOP AND
SELECTED STATES' PRISONS DURING
PERIODS IN 1997 AND 1995 WITH
FINAL DEPORTATION ORDERS

===== Appendix V

Table V.1

Time From Release to Deportation for
Aliens Released From BOP and Four
States' Prisons During a 6-Month Period
in 1997 With Final Deportation Orders

Time from release to deportation	IHP completed in prison		Hearings started in prison, completed after release		Hearings started and completed after prison release	
	Number	Percent	Number	Percent	Number	Percent

< 1 month	4,408	93	2,025	66	253	59
1 mo. to < 2 mos.	168	4	551	18	95	22
2 mos. to < 4 mos.	89	2	308	10	54	13
4 mos. to < 6 mos.	45	1	83	3	10	2
6 mos. to < 8 mos.	19	\a	50	2	11	3
8 mos. to < 10 mos.	8	\a	30	1	7	2
Total	4,737\b	100	3,047\b	100	430\b	101\c

Note: The four states are California, Florida, New York, and Texas.

\a Less than 1 percent.

\b Of criminal aliens released from prisons in 4 states and BOP from January through June 1997, 5,663 had completed the IHP with a final deportation order (see app. IV); 4,737 of the aliens (84 percent) were deported within 9 months of their release. Of 4,011 released criminal aliens who completed removal proceedings after their release from prison, 3,477 (87 percent) were deported within 9 months of release.

\c Total does not add to 100 percent due to rounding.

Source: GAO analysis of BOP and state data.

Table V.2

Time From Release to Deportation for
Aliens Released From BOP and Five
States' Prisons\ During a 6-Month Period
in 1995 With Final Deportation Orders

Time from release to deportation	IHP completed in prison		Hearings started in prison, completed after release		Hearings started and completed after prison release	
	Number	Percent	Number	Percent	Number	Percent
< 1 month	3,080	92	2,456	68	130	36
1 mo. to < 2 mos.	135	4	644	18	55	15
2 mos. to < 4 mos.	80	2	296	8	55	15
4 mos. to < 6 mos.	25	\a	110	3	47	13
6 mos. to < 8 mos.	18	\a	47	1	34	9
8 mos. to < 10 mos.	9	\a	34	\1	45	12
Total	3,347\b	100	3,587\b	99\c	366\b	100

Note: The five states are Arizona, California, Florida, New York, and Texas.

\a Less than 1 percent.

\b Of criminal aliens released from prisons in 5 states and BOP from April through September 1995, 4,582 had completed the IHP with a final deportation order (see app. IV); 3,347 of the aliens (73 percent) were deported within 9 months of their release. Of 4,160 released criminal aliens who completed removal proceedings after their release from prison, 3,953 (95 percent) were deported within 9 months of their release.

\c Total does not add to 100 percent due to rounding.

Source: GAO analysis of BOP and state data.

GAO ESTIMATE OF AVOIDABLE
DETENTION COSTS

===== Appendix VI

Because most criminal aliens released from state and federal prisons in fiscal year 1997 had not completed the IHP, INS needed to detain these aliens until their removal hearings could be completed. This situation placed unnecessary demands on INS' limited detention space and, as shown below, cost INS over \$40 million over a 9-month period that could have been avoided.

Table VI.1

INS' Detention Costs for Deported
Criminal Aliens Who Did Not Complete the
IHP During Fiscal Years 1997 and 1995

	Criminal aliens released to INS from prison without final deportation orders			
	Fiscal year 1997 (N=22,974)		Fiscal year 1995 (N=20,118)	
Hearing process	Started before prison release	Started after prison release	Started before prison release	Started after prison release
Estimated number of criminal aliens	20,217	2,757	18,307	1,811
Average avoidable days in detention\	26	33	23	88
Average daily detention cost	\$65.61	\$65.61	\$64.45\	\$64.45\
Fiscal year detention cost\	\$34,487, 372	\$5,969,2 63	\$27,137, 381	\$10,271, 268
=====				
Total avoidable fiscal year detention cost	\$40,456, 635 (FY 1997)		\$37,408, 649 (FY 1995)	

Note 1: These data are based on aliens who were deported within 9 months of release from prison.

Note 2: INS revised its procedures for tracking alien travel, detention, and welfare costs. The revised procedures, effective fiscal year 1997, eliminated certain types of costs that were previously part of the daily detention costs, added some costs that had not been included previously, and classified some of the same costs in different categories.

\a Avoidable days = average number of days in detention beyond those spent by criminal aliens who had a final order when released.

\b The 1995 average daily detention cost of \$64.45 is about 2 percent less than the 1995 estimate of \$65.75 reported in our previous testimony because all costs in this report account for the proportion

of detainees who are spread among three types of facilities--INS Service Processing Centers, contract facilities, and state and local correction facilities--that have different daily rates.

\c Avoidable detention cost = number of aliens X average net days in detention X average daily detention cost.

Source: GAO analysis of INS data.

We used our sample results to estimate total avoidable detention costs nationwide for criminal aliens released from prisons to INS without final deportation orders. Our calculations were based on criminal aliens in our 1995 and 1997 samples who completed removal proceedings and were deported within 9 months of release from prison. Using these data and information from INS on the total number of criminal aliens released to INS in 1995 and 1997 without final deportation orders, we derived separate nationwide cost estimates for detaining criminal aliens (1) who started proceedings before prison, completed them after prison, and were deported within 9 months of prison release and (2) who started and completed proceedings after prison and were deported within 9 months of prison release.

Our sample of 12,495 potentially deportable criminal aliens released from BOP and four states' prisons during the first half of 1997 included 6,450 inmates who were released to INS without INS' having completed the inmates' hearing process while they were in prison. Nationwide, INS reported that in all of fiscal year 1997, a total of 22,974 such inmates were released into its custody. Of the 6,450 released inmates that we studied, 3,477 inmates had received deportation orders and were deported within 9 months of prison release. We were able to determine for 3,477 of these released inmates both the average number of days detained by INS and whether the hearing process started before or after prison release. Of the 3,477 inmates, 88 percent started removal proceedings in prison, and they were held for an average of 34 days. The remaining 12 percent of these inmates started removal proceedings after prison release and were held for an average of 41 days. For the remaining 2,973 inmates in our study, we assumed that the timing of removal proceedings and the average number of days in INS detention were similar. The 2,973 inmates included (1) 1,932 inmates for whom there was no evidence that the hearing process was completed, (2) 507 inmates for whom the hearing process was completed after release from prison and no deportation order was issued, and (3) 534 inmates for whom the hearing process was completed after release from prison and a deportation order was issued. These data provide the estimate that for 88 percent, or 20,217 of the 22,974 released inmates, INS would have begun their hearing process before release, and that for the remaining 2,757 released inmates, INS would have begun their hearing process after release.

To determine the avoidable detention cost, we subtracted 8 days from each of the observed detention times because this was the average detention time for criminal aliens who completed the IHP with final deportation orders. According to INS, the average daily cost to detain a single alien was \$65.61 in fiscal year 1997.

To compare avoidable detention costs in 1997 with 1995, we dropped all cases from both of our 1997 and 1995 samples in which aliens had been out of prison for longer than 9 months. This was because 9 months was the maximum amount of time that every foreign-born inmate in both samples was followed up in our study. Using a weighted average, we found that in fiscal year 1995, INS could have avoided over \$37 million in detention costs. In 1995, the average detention time for criminal aliens who completed the IHP with final deportation orders was 9 days, the average daily detention cost was \$1.16 per

alien higher in 1997, and the number of aliens who were detained and deported within 9 months of release was nearly 3,000 less than in 1997.

At least some of the savings in detention costs that INS could realize by processing more criminal aliens through the IHP would be offset by any additional funding that might be required to provide additional resources for the IHP.

MAJOR CONTRIBUTORS TO THIS REPORT

===== Appendix VII

GENERAL GOVERNMENT DIVISION,
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OFFICE OF THE GENERAL COUNSEL

Jan B. Montgomery, Assistant General Counsel

*** End of document. ***

Irene Bueno

 06/17/99 10:05:21 AM

Record Type: Record

To: Allen Erenbaum, Cathy.St.Denis
cc: Ingrid M. Schroeder/OMB/EOP, Clara J. Shin/WHO/EOP
Subject: Immigration Hearing

First, I understand that Commissioner Meissner is testifying on 6/24 before the Senate Immigration Subcommittee on criminal aliens specifically the - institutional removal program and use of prosecutorial discretion that is based on a letter that Abraham sent to Meissner. I understand that the Inspector General and the GAO and well as others will be testifying.

I would appreciate getting an update on this issue prior to the IWG meeting today. I appreciate if one of you would call me about this and give a sense of what the Commissioner plans to say; what are the controversial issues; and what are we doing to address these issues.

Second, where are we on the waiver legislative package that was removed from the detention package. Would sending this legislation to the Hill help or hurt in the context of the hearing.

Thanks.

CRIMINAL DETENTION HEARING

IHP/IRP – criticize INS implementation – have not deported large number?

- Relationship with Early Release Reg that will be published soon?
- Update fact sheet and talking points – address IG and GAO reports
- What's the status of enhanced IHP program?
- What is the Chrome case?
- Should we brief the Subcommittee staff
- What about doing some positive press prior to the hearing since I am sure Branigan will do a story

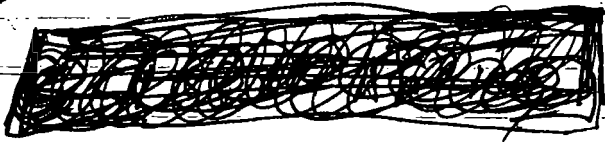
Prosecutorial Discretion

- Why use prosecutorial discretion for serious criminal and not for “silly cases” minor crimes committed many years ago?
- Are there specific instances of this?

Waiver

- Status of our waiver proposal
- Does it help to introduce that legislation near or around the hearing?

Judy Gidycz
perio.



CH Caucus. mtg. Perio mtg after

4/23 - AILA impacted families. IIR/KA ~~at~~ detention
family - detention

Laurel Kazooz - US citizen

4/23 - Press conference on the issues ~~of~~ generally
mt. Abraham hrs in the afternoon

Very powerful

Marla Edwards - April

~~Perio~~ Date & time

4/22 - PM

4/23 AM

4/24 ~~Perio~~

Abraham

- IG report dealing w/ Chrono. very same conclusion.

- GAO sends report on Inst. Prog. - 10/98

- Fully revised removal program

Letter to Meisner

Why she can not exercise prosecutive discretion

only cases

more difficult case

ABA - Prosecutorial discretion doesn't work many cases need legislation

Bishop Winsky - more
people

Abraham - ~~any~~ later -

why doesn't prosecution doesn't work

if convicted I.R.P. being ~~not~~ in

restoration of war

Press Conference -

Julie F. is attending reception



Cathy.St.Denis@usdoj.gov

06/15/99 05:45:00 PM

Record Type: Record

To: Irene Bueno/OPD/EOP

cc:

Subject: Regulation

Does this help on the message you left me yesterday?

Also, need to talk to you re: the H2A meeting for next week -- call me when you get a moment.

Thanks.

Forward Header

Subject: Regulation

Author: Joan S Lieberman at HQCOU

Date: 6/15/99 4:31 PM

Copy of the regulation for state inmates is being sent to you by Ron Dodson in INV. His phone number is 6 7310. This regulation implements INA subsection

241(a)(4)(B)(ii). This regulation involves state inmates only and allows a state or locality to recommend deportation for a non-violent offender and permits early release from incarceration [the state must have enabling legislation]. The alien can only be a participant if he or she stipulates to deportation and INS must be capable of securing a Travel Document without problems. If such conditions are not met, custody doesn't transfer, or if INS already has taken over the detainee, then the state by MOU provision must take the alien back. If the alien reenters after deportation illegally, the state must reincarcerate the alien for the balance of the sentence by provision in the MOU. [Recommended national MOU drafted at same time as regulation]. I don't

believe the regulation is controversial and it's participation by states or localities is totally voluntary.

here —

INS rule for
your comment This

That

REGULATORY REVIEW WORKSHEET

OMB NUMBER: 1115-A506
RIN NUMBER: 1115-AE83
CHRONOLOGY: No previous reference

RECEIVED : 03/17/1999
E.O. DUE DATE: 06/15/1999
EXTENDED : (Y/N)
APPEALED : ___/___/___

AGENCY : Department of Justice
SUBAGENCY : Immigration and Naturalization Service

TITLE: Early Release for Removal of Criminal Aliens in State Custody
Convicted of Nonviolent Offenses

STAGE: Proposed Rule
LEGAL DEADLINE: No

ECONOMICALLY SIGNIFICANT: No
UNFUNDED MANDATE : No

DESK OFFICER: Stuart Shapiro
ANALYST : Richard Theroux

ACTION:

- ☐ (1) Consistent Without Change
☐ (2) Consistent With Change
☐ (3) Withdrawn by Agency
☐ (7) Returned - Sent Improperly
☐ (9) Returned for Reconsideration
☐ (11) Emergency
☐ (12) Statutory or Judicial Deadline

ECONOMICALLY SIGNIFICANT: ☐ Yes ☐ No

MAJOR : ☐ Yes ☐ No

UNFUNDED MANDATE : ☐ Yes ☐ No

(If yes, check all that apply)

- ☐ State, local, tribal governments
☐ Private Sector

REGULATORY IMPACT:

- ☐ (D) Deregulatory
☐ (R) Regulatory
☐ (N) Nonregulatory

SIGNATURES AND DATES:

RMO Desk Officer Economist OIRA

Date: _____ Date: _____ Date: _____ Date: _____

AGENCY NOTIFIED: ___/___/___

TITLE:

Proceedings to Determine Deportability of Aliens in the United States: Apprehension, Custody, Hearing, and Appeal

RIN: 1115-AE83 (PROPOSED)

REGULATORY PLAN: No

PRIORITY: Substantive, Nonsignificant

REINVENTING GOVERNMENT:

This rulemaking is not part of the Reinventing Government effort.

LEGAL AUTHORITY:

8 USC 1103; 8 USC 1223; 8 USC 1227; 8 USC 1251; 8 USC 1253;
8 USC 1255; 8 USC 1330; 8 CFR 2

CFR CITATION:

8 CFR 241

LEGAL DEADLINE: None

ABSTRACT:

This rule establishes an administrative process whereby criminal aliens in State custody convicted of nonviolent offenses may be deported prior to completion of their sentence to imprisonment pursuant to: section 241(a)(4)(B) of the Immigration and Nationality Act, as amended by section 438 of the Antiterrorism and Effective Death Penalty Act and section 305(a)(4)(B) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

TIMETABLE:

ACTION	DATE	FR CITE
NPRM (INS No. 1848-97).....	09/00/99	
Final Action (INS No. 1848-97).....	05/00/00	

REGULATORY FLEXIBILITY ANALYSIS REQUIRED: No

GOVERNMENT LEVELS AFFECTED: State, Federal

ADDITIONAL INFORMATION:

INS No.1848-97

RIN: 1115-AE83

DATE 3/17/99

TITLE:

PAGE 2

Proceedings to Determine Deportability of Aliens in the United
States: Apprehension, Custody, Hearing, and Appeal

AGENCY CONTACT:

Joan S. Lieberman,
Attorney,
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Department of Justice,
Immigration and Naturalization Service,
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Revision: 12/97 (Previous versions obsolete)

BILLING CODE: 4410-10

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 241

[INS No. 1848-97]

RIN 1115-AE83

Early Release For Removal Of Criminal Aliens

In State Custody Convicted of Nonviolent Offenses

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Immigration and Naturalization Service (INS) regulations relating to apprehension and removal of aliens under section 241 of the Immigration and Nationality Act (Act). This rule establishes an administrative process whereby criminal aliens in state custody convicted of nonviolent offenses may be removed prior to completion of their sentence of imprisonment. This rule will implement the authority contemplated by Congress to enhance the ability of the United States to remove criminal aliens.

DATES: Written comments must be submitted on or before [Insert date 60 days from date of publication in the FEDERAL REGISTER].

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536, Attn: Public Comment Clerk. To ensure proper

handling please reference INS No. 1848-97 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514-3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Ronald W. Dodson, Senior Special Agent, Office of Investigations, Immigration and Naturalization Service, 425 I Street, NW, Room 1000, Washington, DC 20536, telephone (202) 514-2998. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

On April 24, 1996, President Clinton signed into law the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. 104-132, 110 Stat. 1214. The AEDPA contained numerous provisions dealing with criminal aliens, designed to "enhance the ability of the United States to deport criminal aliens." See Conference Report on S. 735 (H. R. Rept. No 104-518, dated April 15, 1996), at page 119 (concerning AEDPA Sec. 441).

Section 438(a) of AEDPA added subsection 242(h)(2) to the Act, authorizing, but not compelling, the Attorney General to remove certain aliens convicted of nonviolent offenses prior to the completion of their sentence of imprisonment.

On September 30, 1996, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. L. 104-208, 110 Stat. 3009, became law. The provisions formerly contained in section 242(h)(2) of the Act, as amended by AEDPA, and subsequently further amended by IIRIRA, are now found in section 241(a)(4)(B) of the

Act. Both AEDPA and IIRIRA contain separate provisions, now incorporated in the Act, which distinguish between Federal and state prisoners. However, there are some differences between AEDPA and IIRIRA pertaining to categories of Federal and state inmates barred from early release. Section 305(a) of IIRIRA both expands and contracts the classes of offenders eligible for consideration for early removal under the Act as amended by AEDPA. Under IIRIRA, aliens in the custody of the state convicted of offenses defined in section 101(a)(43)(C) or (E) of the Act are ineligible for early release. Under IIRIRA, alien smuggling is no longer a bar to eligibility for state inmates.

The statutory provisions distinguish between Federal and state inmates. Because of the clear distinctions between provisions and procedures for Federal and state inmates, the two require distinct regulatory separation. The Department of Justice is giving consideration to various means for implementing the statute on the Federal level. This proposed rule addresses state inmates only.

According to section 241(a)(4)(B)(ii), an alien may be removed from state custody if the chief state official exercising authority with respect to the incarceration of the alien makes a determination that the offense is a nonviolent offense, and that removal is in the best interest of the state. The chief state official must then submit a written request for the alien's removal to the Attorney General.

Section 438(b) of the AEDPA amended section 276 of the Act,

[8 U.S.C. 1326] to require incarceration for the remainder of their sentence, without parole, of aliens who were released for early removal pursuant to the provisions of section 438(a) of the AEDPA, and who reenter the United States without the express permission of the Attorney General. Section 241(a)(4)(D) of the Act, as amended by IIRIRA, provides that no cause or claim may be asserted under section 241 against any official of the United States or of any state to compel the release, removal, or the consideration for release or removal of any alien.

Procedurally, this regulation provides that a state or its political subdivision must have enabling legislation authorizing early release of prisoners. Participation in the program will be contingent on a formal agreement between the state and the Service in the form of a uniform memorandum of understanding. The memorandum of understanding may be modified in writing by mutual consent of the signatories and/or may be canceled by either party upon 30 days⁰ written notice. Only criminal aliens approved by both the state and the Service as suitable candidates will be released to the Service for removal. In accordance with the Victim and Witness Protection Act of 1982 (VWPA) and the Attorney General's Guidelines for Victim and Witness Assistance, the state will make reasonable efforts to notify victims of record regarding the early release of criminal aliens for removal. The state will assist the Service by providing, to the extent allowed under state law, access to and use of information

contained in the alien's correctional files to assist in the removal of such criminal aliens. The date of the criminal alien's release will be coordinated between the Service and the governmental entity representing the state or its political subdivision. The criminal alien will remain in the custody of the state until: a final order of removal is issued, there are no impediments to obtaining travel documents for the alien, and arrangements have been made to remove the alien. In order to transfer custody of the criminal alien from the state to the Service, the Service will notify the state when a final order has been issued and removal arrangements have been made. At that time the transfer will take place. If after the transfer of custody, the alien cannot be removed promptly, the Service will return the alien to the custody of the state. The state will enter relevant information relating to such criminal aliens released and removed into its criminal history records system, which must provide for rapid identification of such aliens should they reenter or attempt to reenter the United States or otherwise be encountered by law enforcement personnel. The Service will also develop and maintain a permanent alien file detailing the identity of each such criminal alien. The Service will ensure that fingerprint dispositions are expeditiously forwarded to the Federal Bureau of Investigation (FBI) for inclusion in the subject's criminal history record and that the alien's name is forwarded to the National Crime Information Center (NCIC). The

state may submit names for consideration for removal prior to completion of criminal sentences of aliens who have committed nonviolent offenses as defined under state law, except for offenses specifically excluded by Federal statute. The state will advise such aliens that the release is conditional and the alien must agree in writing that he/she has been informed that the criminal sentence(s) has been suspended^o not rescinded^o and that such suspended sentence(s) will remain in abeyance for the state to reimpose should the alien breach any of the conditions of his/her release. The alien must have admitted and conceded the charges and factual allegations which form the basis of the removal action, and must have waived all rights to appeal any order of removal and waived the right to apply for relief from removal. The criminal alien must remain outside the United States and agree to refrain from making any attempt to reenter the United States for the time period statutorily specified in 8 U.S.C. 1182 (10 years, 20 years, or at any time in the case of an alien convicted of an aggravated felony), unless the Attorney General has expressly consented to such alien's reentry. Any unlawful return to the United States shall constitute a violation of the conditions of the alien's release and shall result in such alien's return to the custody of the state for the completion of the alien's sentence and the alien shall be subject to Federal prosecution. The state or the Service will notify the other of any encounter with such alien. If, during the period of any

remaining sentence, the criminal alien applies to the Attorney General for readmission after removal under this program, and the Service is inclined to grant the request, the Service will notify the state of that request and provide an opportunity for the state to note any objection.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities because of the following factors:

This rule will not have a significant economic impact on small entities since it pertains to removal of criminal aliens incarcerated in state institutions (or a political subdivision thereof). The removal of these individuals from the United States will not adversely or materially affect a sector of the economy, cause major increases in costs or prices for consumers or have other adverse effects on the economy in terms of productivity, competition, jobs, or the environment, public health or safety or adversely affect small government jurisdictions.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This

rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Unfunded Mandates Reform Act Of 1995

This rule will not result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. The alien's release under the provisions of this section is conditional. Any violation of the terms of release will result in a violation of that conditional release, resulting in a return to state or local custody. State (or political subdivision thereof) participation in this process is at the discretion of the state or political subdivision thereof. This rule does not impose an enforceable duty on state, local, or tribal governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Executive Order 12866

~~This rule is considered by the Department of Justice,~~
Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. An assessment of the need for the

regulatory action, an explanation of how the action will meet that need, an assessment of the potential costs and benefits of the regulatory action and of any reasonable feasible alternatives, and any bearing which the regulatory action has on state, local, and tribal governments in the exercise of their governmental functions is being prepared for submission to the Office of Management and Budget under section 6(a)(3)(B)-(D).

Executive Order 12612

The regulation adopted herein will not have substantial direct effect on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 8CFR Part 241

Administrative practice and procedure, Aliens, Immigration.

Accordingly, part 241 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 241--APPREHENSION AND DETENTION OF ALIENS ORDERED REMOVED

1. The authority citation for part 241 reads as follows:

Authority: 8 U.S.C. 1103, 1227, 1231, 1253, 1255, and 1330; 8
CFR part 2. *(1223 + 1251 removed)*

2. Section 241.17 is added to read as follows:

241.17 Removal of nonviolent offenders in state custody prior to the completion of the alien's sentence of imprisonment pursuant to section 241(a)(4)(B) of the Act.

(a) Authorization. (1) A state or its political subdivision must have enabling legislation in order to enter into an agreement with the Service for participation in an early release program. Participation in the program will be contingent on a formal agreement bearing the signatures of the Governor of the state or designee and the Commissioner or designee. In the case of a political subdivision, participation will be contingent on the signature of the leading official of the political subdivision and the Commissioner or designee following formal agreement between the state and the Service. An early release program for inmates of a state or political subdivision will be implemented through a Memorandum of Understanding (MOU) developed by the Service. From the date of final publication in the Federal Register, requests for

consideration under this provision of the Act should be referred to the chief state official exercising authority with respect to the confinement of the alien. Any inquiries pending with the Attorney General or the Service at that time will be referred to the appropriate state authority.

(2) The uniform MOU will constitute the agreement between the Service and a state or political subdivision thereof for the removal of nonviolent alien offenders prior to the completion of the alien's sentence to imprisonment. The MOU will govern the procedures and responsibilities of the parties. Specific operational procedures for implementing the MOU should be negotiated between the appropriate state officials and Service District Offices. The MOU imposes no limitations on the discretion of the Attorney General to exercise authority or to decline to do so with regard to section 241(a)(4)(B) of the Act. The MOU does not confer any rights on any third party.

(b) Agreement provisions. The MOU shall include the following provisions:

(1) Only criminal aliens approved by both agencies as suitable candidates will be released to the Service for removal. The Service District Office will review the state's written submission. A query of the National Crime Information Center (NCIC) will be performed to determine if there are outstanding wants or warrants in other jurisdictions. Notification will be provided to the Department of Justice Office of International Affairs of those

aliens being considered for early release to provide that office with the opportunity to note any objection. The Service will indicate by return document which aliens the Service finds appropriate for the program. The decision of the Service District Office as the Attorney General's delegate is not reviewable.

(2) In accordance with the Victim and Witness Protection Act of 1982 (VWPA) and the Attorney General's Guidelines for Victim and Witness Assistance, the state will make reasonable efforts to notify victims of record at the time of request for consideration under this section regarding the early release of the alien for removal and the nature and intent of the removal of nonviolent alien offenders prior to the completion of their sentence to imprisonment.

(3) The state will certify that there are no detainers or other litigation involving the alien as a defendant or witness in any criminal proceeding outstanding at the time of the request for consideration for early release.

(4) The governmental entity representing the state or its political subdivision will assist the Service and its agents by providing, to the extent allowed under state law, access to and use of documents, materials and information contained in the aliens' correctional files for the purpose of assisting the Service in its efforts to remove such criminal aliens from the United States.

(5) The date that criminal aliens are to be released to the Service for removal will be coordinated between the Service and the

governmental entity representing the state or its political subdivision. Any criminal alien determined eligible for removal pursuant to section 241(a)(4)(B) of the Act will remain in the custody of the governmental entity representing the state or its political subdivision until: (i) A final order of removal is issued against such alien by an Immigration Judge or through any other procedure authorized by law, (ii) There are no impediments to obtaining travel documents, and (iii) Arrangements have been made to remove the alien.

(6) In order to transfer custody of the criminal alien from the state to the Service, the Service will notify the governmental entity representing the state or its political subdivision when the final order of removal is issued and the consular official has assured the Service that a travel document will be immediately issued upon presentation of the criminal alien. The Service will then maintain custody of such alien in a secure environment until such time as the Service effectuates the alien's removal from the United States. If, after the Service has accepted custody of a criminal alien released by the governmental entity representing the state or its political subdivision for removal, the alien cannot be promptly removed from the United States, the Service will return that alien to the custody of the state. The state must accept such alien into its custody unless prevented from doing so by order of a court of competent jurisdiction or other lawful authority.

(7) The state will enter relevant information relating to criminal aliens released and removed subject to the provisions of section 241(a)(4)(B) of the Act into its criminal history records system. Such system must provide for the rapid identification of any alien who is released and removed subject to the provisions of section 241(a)(4)(B) of the Act should such alien reenter or attempt to reenter the United States and/or otherwise be encountered by law enforcement personnel. The Service will develop and maintain a permanent alien file detailing the identity of each criminal alien subject to treatment under section 241(a)(4)(B) of the Act, including his or her fingerprints and photograph, and executed warrant of removal, for the purpose of allowing rapid identification of any alien released for purposes of removal under section 241(a)(4)(B) of the Act, should such alien reenter or attempt to reenter the United States.

(8) The Service will also ensure that fingerprint dispositions are expeditiously forwarded to the Federal Bureau of Investigation for inclusion in the subject's criminal history record and that the alien's name is forwarded to the National Crime Information Center (NCIC).

(9) The state may submit names for consideration for removal prior to completion of criminal sentences of aliens who have committed nonviolent offenses as defined under state law, except for the following offenses specifically excluded by section 241(a)(4)(B) of the Act: illicit trafficking in firearms or

destructive devices (as defined in 18 U.S.C. 921), or in explosive materials (as defined in 18 U.S.C. 841(c)), an offense described in 18 U.S.C. 842(h) or (i) or 18 U.S.C. 844(d), (e), (f), (g), (h), or (i) (relating to explosive materials offenses); 18 U.S.C. 922(g)(1), (2), (3), (4), (5), (j), (n), (o), (p), or 18 U.S.C. 924(b) or (h) (relating to firearms offenses); or an offense described in section 5861 of the Internal Revenue Code of 1986 (relating to firearms offenses).

(10) Any alien being considered for early release pursuant to section 241(a)(4)(B) of the Act shall be advised by the governmental entity representing the state or its political subdivision that the release is conditional and the alien must agree in writing that the following special conditions have been met:

(i) The criminal alien has been informed that any state action to release the alien from incarceration pursuant to section 241(a)(4)(B) of the Act will only suspend, not rescind, the alien's remaining criminal sentence(s) and any related period(s) of incarceration, and that such suspended sentence(s) will be tolled and remain in abeyance to be reinstated should the alien breach any of the express conditions of the executive release order.

(ii) The criminal alien has a final order of removal as required under section 241(a)(4)(B) of the Act. Further, the alien must have admitted and conceded the charges and factual allegations which form the basis of the removal action, and must have waived

all rights to appeal any order of removal issued pursuant to authorized procedures. The alien must have waived any right to pursue an appeal of the order of removal, or to seek any relief therefrom, and must further waive any possible challenge to removal under domestic or international law, including but not limited to asylum, withholding of removal, and protection from "refoulement" under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees or under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

(iii) The criminal alien has withdrawn any pending appeal of the underlying criminal conviction and sentence, and waived his or her right to pursue such appeal if the time for filing has not yet expired.

(iv) The criminal alien must cooperate fully with the Service in connection with execution of any final order of removal, particularly with respect to producing travel documents or other evidence of nationality.

(v) The criminal alien must remain outside the United States and agree to refrain from making any attempt to reenter the United States for the period specified by section 212 (a)(9)(A)(ii) of the Act (8 U.S.C. 1182(a)(9)(A)(ii)), as amended, in that an alien who has been ordered removed or departed while an order of removal was outstanding is ineligible to seek admission within 10 years of the date of such alien's departure or removal, or within 20 years of such date in the case of a second or subsequent removal, or at any

time in the case of an alien convicted of an aggravated felony, unless the Attorney General has expressly consented to such alien's reentry. Any unlawful return to the United States shall constitute a violation of the alien's conditions of release and shall result in such alien's return to the custody of the state (or political subdivision thereof) for the completion of the alien's sentence and the alien will be subject to Federal prosecution.

(11) A criminal alien granted early release for removal, who is removed but subsequently illegally returns to the United States may be subject to Federal prosecution. Either party to this agreement shall notify the other of any encounter with such alien. The Attorney General will determine whether the alien should be prosecuted for an unlawful reentry pursuant to section 276 of the Act. After the Attorney General determines whether to prosecute the alien for reentry after removal and any Federal action or period of Federal incarceration has concluded, the state will assume custody of such alien and bear all costs associated with the transportation and escort back to the state or locality. The state (or political subdivision thereof) will hold the alien in state custody to serve the balance of the sentence of imprisonment in an appropriate state facility at state expense.

(12) If, during the period of any remaining sentence, the criminal alien applies to the Attorney General for readmission after removal under this program, and the Service is inclined to grant the request, the Service will notify the state of that

request and provide an opportunity for the state to note any objection by the victim or other state authority.

(13) The MOU may be modified in writing at any time by mutual consent of the signatories and/or may be canceled by either party upon 30 days written notice. Pursuant to section 241(a)(4)(D) of the Act, as amended by IIRIRA, no cause or claim may be asserted under section 241 against any official of the United States or of any state to compel the release, removal, or consideration for release or removal of any alien and all MOU's will so state.

Dated:

Doris Meissner,
Commissioner, Immigration and
Naturalization Service.

FACT SHEET

3/27/96

Institutional Hearing Program

The Institutional Hearing Program (IHP) is a cooperative effort between the Immigration and Naturalization Service (INS), the Executive Office for Immigration Reform (EOIR) and federal and state correctional agencies to conduct deportation proceedings for convicted criminal aliens while they are serving their prison sentences.

The goal of the IHP is to complete all administrative review prior to completion of the alien's sentence, significantly reducing INS detention costs and threats to public safety by effecting immediate deportation upon completion of sentence.

Currently, there are 71 IHP hearing sites in 40 states, the District of Columbia and the Virgin Islands.

Enhanced IHP

Enhanced Institutional Hearing Programs include additional funding and INS and EOIR staff and special agreements with state and federal prison systems for consolidated prisoner intake sites, centralized immigration hearing locations, and consolidated prisoner release sites so that INS can efficiently and effectively remove deportable criminal aliens from the United States when they complete their sentences.

- Enhanced programs began in 1994 as a key element in the Clinton Administration's strategy for improving immigration enforcement. Enhancements initially were targeted to five states - California, Florida, Illinois, New York and Texas - and expanded to seven by including Arizona and New Jersey in FY 1996. Overall, these states account for 81 percent of the foreign-born state inmate population which numbers 75,242 nationwide.
- Prior to FY 1996, IHP enhancements were approved and have been operating in California, Florida, Illinois, New York, Texas and nine federal Bureau of Prisons facilities.
- In FY 1996, IHP enhancements are now implemented in New Jersey and are being planned for Arizona later in the year.
- Beginning in July 1996, INS will operate the Texas IHP through a single intake, processing and release site.
- The proposed FY 1997 budget includes resources for IHP enhancements in the states of Massachusetts and Washington.
- In FY 1995, 9,557 criminal aliens were removed through the IHP, a 37 percent increase over the previous year.
- Under a plan for enhancing the federal IHP, which was signed on March 7, 1996, to be implemented through the end of FY 1997, the Bureau of Prisons (BOP) will be

Prepared by the Office of Public Affairs (202) 514-2648

assigning nearly all foreign-born alien prisoners to a short list of BOP prisons designated as IHP intake and hearing sites. Their cases will be reviewed by INS investigators at those sites and, as appropriate, deportations proceedings will be concluded. When they finish their sentences, criminal aliens in federal custody will then be released at specified sites close to international airports or other transportation points to facilitate their actual removal.

Budget Resources for Criminal Alien Removals

- **FY 1996 Approved Budget** – As part of INS' overall \$140 million alien removal budget, which includes 1,406 new positions and a range of detention and deportation resources nationwide, 577 new staff are devoted to increasing INS' capacity to detain and remove deportable criminal aliens from the United States. Some of these resources will go to the enhanced IHP and a further portion will be allocated to other initiatives with local law enforcement agencies to assure removal of criminal aliens. Among these are county jail projects, designed mainly to deal with prisoners whose sentences are too short to process them through an IHP. Funding also will be applied to creation of a modern transportation network and a computerized detention space management system to maximize the efficiency of INS alien removal efforts.
- **FY 1997 Budget Request** – Includes 49 positions and \$8.1 million in funding in FY 1997 to further expand the IHP to include the next two states most affected by illegal immigration: Massachusetts and Washington, whose correctional facilities annually incarcerate an estimated 2,100 and 1,340 foreign-born prisoners, respectively.

Q&As - INS Institutional Hearing Program (IHP)

Contact: Eric Andrus, 202/514-8080 - 7/16/97

Q. The GAO reported in Congressional hearings yesterday that INS is only deporting about 30 percent of the criminal aliens in US jails. Why?

A. Actually, the number of criminals getting deportation orders while still serving time is up by 37 percent this year over last, thanks to administration initiatives in FY 96 and 97 to boost the INS Institutional Hearing Program (IHP). That GAO study was based on 1995 data, before the program was significantly expanded.

Q. Why isn't the IHP program used more to deport criminal aliens?

A. It's being used in record numbers now because of those new resources. This year, up to 50 percent of the criminal aliens serving time in state and federal prisons will get deportation orders while serving time. Most of the remainder will start the deportation process while still in prison. We've significantly expanded the program in the federal system and in the seven state prison systems that have most of this country's criminal aliens. We're building toward our goal to identify and get final deportation orders on 100 percent of the deportable criminal aliens in state and federal prisons while they're still serving time.

Talking Points

- The goal of IHP is to identify and get final orders of deportation on criminal aliens while they are still serving time in prison. This allows them to be deported immediately after they complete their sentence, reducing INS detention costs and improving public safety. IHP is a cooperative effort between INS, the immigration courts (Executive Office of Immigration Review) and the states.
- The IHP today is more successful than ever at getting deportation orders on criminal aliens serving time in federal and state prisons. This means more criminal aliens are being deported as soon as they are released from prison.
- IHP deportations are up 37 percent over last year, a direct result of administration efforts to build the program during FY 95 and 96. More than 9,400 criminal aliens have already been deported this fiscal year through the IHP.
- IHP is at 76 sites in 40 states, the District of Columbia and Puerto Rico, including 11 Federal Bureau of Prisons locations.
- INS plans to develop a centralized data base of IHP criminal aliens and reduce IHP staff attrition. The agency will also work to improve its relationship with the states who have IHP, a key factor in the success of the program.

- Since 1995 the administration has established enhanced IHP Programs in the federal prison system and the seven state prison systems that represent more than 85 percent of all criminal aliens in prison. These enhancements include additional funding and staff for INS and the immigration courts. They also include special agreements with federal and state prison systems to consolidate prisoner intake and release points and consolidate immigration hearing locations.

LS- —

PER THE

Q/A in

YOUR BOX.

Jori

IN BRIEF

GAO Says INS Failing To Deport Criminals

The Immigration and Naturalization Service came under criticism from Congress and the General Accounting Office yesterday for failing to deport thousands of foreign criminals who were subject to expulsion after serving their U.S. prison sentences.

Instead, many have been released in the United States, and some have then committed new crimes, according to a GAO report issued at a hearing of the House Judiciary subcommittee on immigration.

The report examined the Justice Department's 10-year-old Institutional Hearing Program, which is designed to identify deportable foreign-born criminals while they are in U.S. federal or state prisons and expel them once they finish their sentences.

"Since 1994, less than 30 percent of the eligible criminal aliens have actually been removed" under the program, said Rep. Lamar S. Smith (R-Tex.), the subcommittee chairman. As a result, the INS has had to spend more than \$60 million a year to detain many of those convicts again when they complete their prison terms and, worse, "thousands of criminal aliens are released into American communities and neighborhoods," Smith said.

In the second half of fiscal 1995, the GAO study said, nearly 2,000 foreign criminals were released into U.S. communities because the program failed to identify them.

The INS responded that the program has improved since receiving new resources and that deportations under it rose 37 percent in the first half of this fiscal year from the same period last year.

Although the INS has accepted the GAO's recommendations for improving the program, the report's numbers are flawed, an INS spokesman said. The study identified as deportable some prisoners who were not, he said, because

on, and some of those counted by the GAO upon release were originally jailed years before the program was expanded.

According to Smith, more than 110,000 foreign-born convicts are in U.S. state and federal jails, and their numbers are rising by about 50,000 a year. Of those prisoners, about 80 percent are subject to deportation, most of them because they were in the United States illegally before committing the crimes for which they were jailed.

—William Branigin



Smith

Consumer Hot Line Closes

One of the federal government's tiniest independent agencies, the U.S. Office of Consumer Affairs, terminated its biggest operation this week.

The office, once part of the White House, ran out of money and had to close its consumer telephone hot line.

Former representative Leslie L. Byrne, a Northern Virginia Democrat whom President Clinton named to head the agency last year, vowed yesterday to keep the office open. The office has exceeded its \$1.5 million budget for the current fiscal year by \$80,000, she said.

Most of its 15 employees, who along with Byrne answered calls on a toll-free telephone number, have been detailed to other federal agencies for the remainder of the fiscal year, she said. About eight workers remain at the office, located a block from the White House, and Byrne said they will attempt to answer letters and promote National Consumer Week, Oct. 25 to 31.

But other agencies will have to do the heavy lifting, Byrne said. "Our job always has been to get others interested," she said with a laugh. "We've always been very frugal in getting others to help."

Byrne, who also serves as a special assistant to the president, acknowledged that the office is facing a difficult future, but said she hopes Congress will continue its operations next fiscal year. "With a budget of \$1.8 million, it's hard for anybody up there [Capitol Hill] to work up a sweat about us," she said. "I know because I've been there."

A spokesman for the Health and Human Services Department said the office

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After Series

By He
Washington

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[The Washington Post Wednesday, July 16, 1997]

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GAO Says INS Failing To Deport Criminals

The Immigration and Naturalization Service came under criticism from Congress and the General Accounting Office yesterday for failing to deport thousands of foreign criminals who were subject to expulsion after serving their U.S. prison sentences.

Instead, many have been released in the United States, and some have then committed new crimes, according to a GAO report issued at a hearing of the House Judiciary subcommittee on immigration.

The report examined the Justice Department's 10-year-old Institutional Hearing Program, which is designed to identify deportable foreign-born criminals while they are in U.S. federal or state prisons and expel them once they finish their sentences.

"Since 1994, less than 30 percent of the eligible criminal aliens have actually been removed" under the program, said Rep. Lamar S. Smith (R-Tex.), the subcommittee chairman. As a result, the INS has had to spend more than \$60 million a year to detain many of those convicts again when they complete their prison terms and, worse, "thousands of criminal aliens are released into American communities and neighborhoods," Smith said.

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Although the INS has accepted the GAO's recommendations for improving the program, the report's numbers are flawed, an INS spokesman said. The study identified as deportable some prisoners who were not, he said, because they were released before Congress expanded the categories of criminal aliens subject to expulsion. In addition, he said, the program is designed to identify deportable foreigners when they enter pris-



Smith

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A spokesman for the Health and Human Services Department said the office will not end the year in the red because HHS had placed three of its employees on "reimbursable details" elsewhere in the department.

—Bill McAllister

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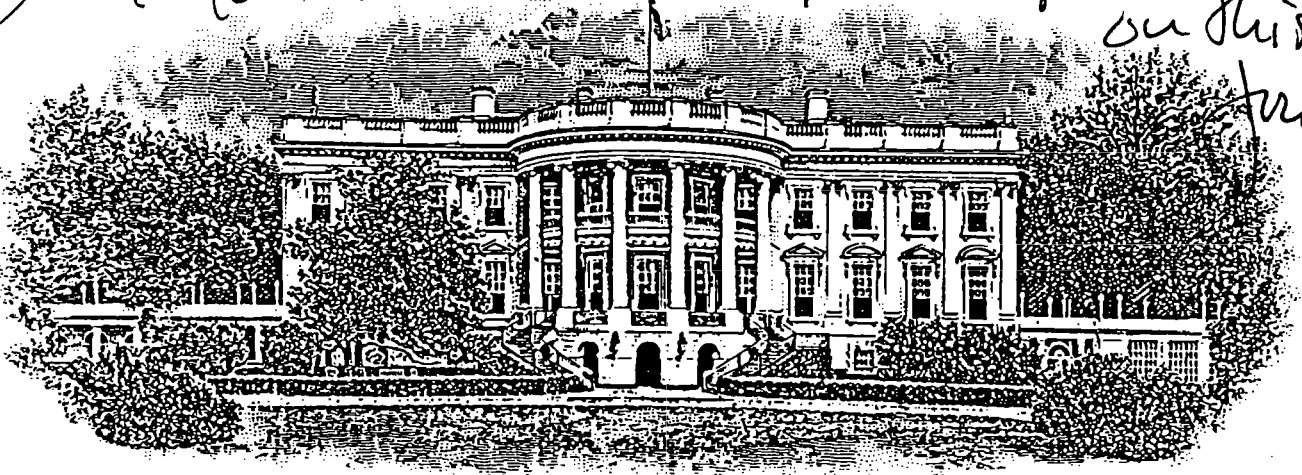
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The White House

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