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CRIMINAL ALIENS: INS ENFORCEMENT

Statement of
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Issues
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Subcommittee on Immigration,
Refugees, and International Law
Committee on the Judiciary
House of Representatives



CRIMINAL ALIENS: INS ENFORCEMENT

SUMMARY OF STATEMENT BY LOWELL DODGE DIRECTOR, ADMINISTRATION OF JUSTICE ISSUES U.S. GENERAL ACCOUNTING OFFICE

The Immigration and Nationality Act authorizes the Immigration and Naturalization Service (INS) to deport aliens convicted of crimes of moral turpitude (such as manslaughter, murder or rape), or convicted of a drug offense. The INS enforcement process usually begins when its investigators identify aliens within the federal, state, or local criminal justice systems.

Our analysis of available data has shown that the involvement of aliens in criminal activity has been significant. For example, about 10,800 offenders--22 percent of the June 18, 1989, federal inmate population--were non-citizens. Over half had been convicted of a crime for which they could be deported. Also, INS estimated that 29,200 criminal alien investigations would be completed in fiscal year 1989--over 300 percent more than the 8,548 completed in fiscal year 1986.

INS generally does not pursue potentially deportable aliens who have committed crimes but are released on probationary or suspended sentences. Because of resource limitations, INS criminal investigations are mainly directed at aliens who are serving prison sentences. This seems reasonable given INS' level of resources.

INS would need additional resources before it could direct substantive enforcement efforts at aliens when they initially come in contact with the criminal justice system (e.g. when first arrested). Additional funding decisions would have to be made by the Administration and Congress.

Mr. Chairman and Members of the Subcommittee

We are pleased to be here today to discuss the extent that aliens are involved in criminal activities and the Immigration and Naturalization Service's (INS) strategy for dealing with them. Our past work in this area has shown that involvement of aliens in criminal activity is significant and that INS' approach has not assured the identification of all criminal aliens convicted of deportable offenses. While my comments focus on those aliens involved in crime, we should recognize that the vast majority of aliens are law-abiding contributors to our society.

BACKGROUND

The Immigration and Nationality Act (INA) authorizes INS to deport aliens who are convicted of crimes of moral turpitude such as manslaughter, murder, or rape, or are convicted of a drug offense.

Arrested aliens are usually first brought into custody by local law enforcement agencies. For example, according to the Chief of the Los Angeles Police Department, illegal aliens occupy on average about 20 to 30 percent of Los Angeles jail space.

The INS enforcement process usually begins when its investigators identify aliens within the federal, state, or local criminal

justice systems. Investigators compile the evidence deemed necessary for deportation and issue (1) detainers, which notify the applicable law enforcement agencies to turn aliens over to INS when they are released from custody and (2) orders to show cause, which inform aliens that they must appear for deportation hearings and show cause why their deportation should not proceed. INS can apprehend criminal aliens when they are released after completing their sentences and either place them in detention or, in some cases, release them on bond.

Like other aliens subject to deportation, criminal aliens are entitled to a hearing before an immigration judge. At a deportation hearing, the case is presented by an INS trial attorney before an immigration judge in the Executive Office for Immigration Review (EOIR). The hearing process provides aliens with an opportunity to contest deportation. Numerous grounds are available for aliens to use in contesting or seeking relief from their deportation, e.g. they may apply for asylum, and they may appeal adverse rulings through the Department of Justice to the federal courts, and to the Supreme Court.

INS Resources

In fiscal year 1989, 1,906 positions were allocated to investigations at a cost of about \$86 million. INS investigation

activities include the identification, detection, and apprehension of criminal aliens. In addition 1,613 positions were allocated for the detention and deportation of aliens, including criminal aliens, at a cost of \$137 million. INS operates seven detention facilities with a total capacity of 2,239 beds. In fiscal year 1989 it detained about 135,000 aliens--75,000 in INS facilities and 60,000 in non-INS facilities.

The 1989 investigation budget represents an increase of almost 90 percent in investigator positions and an increase of more than 100 percent in funding since fiscal year 1986. During the same time frame, the detention and deportation staff has increased by about one-third and its funding by about two-thirds. Total bed capacity has remained the same.

EXTENT OF THE

CRIMINAL ALIEN PROBLEM

While precise measures do not exist on the extent of criminal activity by aliens, available data show that it is significant. For example, according to Bureau of Prison data, about 10,800 offenders, 22 percent of the June 18, 1989, federal inmate population, were non-citizens. Our analysis of Bureau data showed that over half had been convicted of a crime for which they could be deported (e.g. drug trafficking). During fiscal

year 1988 INS deported 5,583 criminal aliens, and as of June of fiscal year 1989 it had deported an additional 6,486.

In our November 1987 report for this subcommittee--Criminal Aliens: INS' Enforcement Activities (GAO/GGD-88-3, Nov. 10, 1987)--we pointed out that the number of deportable criminal aliens was unknown. Generally, crime statistics such as FBI arrest data indicate whether or not individuals are foreign-born rather than whether they are aliens. However, since these statistics were the only existing data, we used them as a rough indicator of the number of criminal aliens.

The data indicated that foreign-born individuals accounted for about 19 percent of the total arrests in 1985 for the six localities discussed in our report--Chicago, Denver, Houston, Los Angeles, Miami, and New York. To place this data in better perspective, foreign-born individuals, according to the 1980 census, represent about 6.2 percent of the total U.S. population and about 19.6 percent of the aggregate population in those six localities. The Bureau of the Census estimates that aliens represent about 50 percent of people who are foreign-born.

In our report, we also pointed out that except for Houston and New York City, the percentage of foreign-born arrestees in the other four areas was comparable to the percent of their foreign-born population. In Houston and New York City the foreign-born

population was 8 and 24 percent and accounted for about 21 and 16 percent of the total arrests, respectively.

In our November 1987 report, we also analyzed the recurring nature of the criminal alien activity of some aliens. Our analysis of FBI criminal history records on 165 deported criminal aliens showed that 56 of the 165 had reentered the country at least once and had come into contact with the criminal justice system. These 56 had a total of 152 deportations, 122 known reentries, and accounted for a total of 260 arrests.

To deal with the criminal alien problem, the level of INS investigation activity has increased substantially in recent years. INS estimated that it will complete 29,200 criminal alien investigations in fiscal year 1989. That number represents a 300 percent increase from 8,548 investigations in fiscal year 1986.

RESPONSE TO GROWING
CONCERN ABOUT CRIMINAL ALIENS

In our March 1986 report--Criminal Aliens: INS' Investigative Efforts in the New York City Area (GAO/GGD-86-58BR, Mar. 10, 1986)--we pointed out that INS generally did not pursue most aliens involved in crime when they first came into contact with the criminal justice system. Rather, INS waited until the aliens

were incarcerated before starting investigations to identify them as potentially deportable.

This strategy, focused on the later stages of the criminal justice process, is not effective in dealing with all deportable aliens because, for example, they may receive a probationary or suspended sentence. Notwithstanding, if they have been convicted and sentenced, they could be deportable. In our 1986 report, we reported that seven of eight felony arrestees in New York were not incarcerated and therefore not available for INS investigators to contact. Also, in 200 cases not assigned to investigators, the aliens involved were arrested and convicted after INS had identified them as potentially deportable. Of these cases, 77 percent of the aliens were arrested at least once after having being identified as potentially deportable, 45 percent were arrested more than once, and 11 percent were arrested five or more times.

In our November 1987 report, we observed that criminal alien investigations in Houston, Los Angeles, and Miami are mainly directed at aliens who are serving sentences in prison. At that time, INS officials believed that this was the best use of its resources.

Nonetheless, the Houston District Office was attempting to establish mechanisms for identifying aliens who were involved in

crimes but not yet incarcerated. The Los Angeles District Office participated in projects with local law enforcement agencies, which notified INS of aliens who had been apprehended. The Chicago and Denver district offices had attempted to concentrate their efforts at the early stages of the criminal justice system --at bond hearings in Chicago and before bond hearings in Denver. Thus, the districts had tried to take advantage of greater opportunities to identify potentially deportable aliens.

An August 1986 INS Northern Region directive, however, limited apprehensions by INS of aliens in the Chicago and Denver offices to those who had already been convicted of a deportable offense. The directive was introduced at that time because of a lack of funds needed to detain aliens and process them for deportation. Additionally, the lack of funds curtailed most of the Denver office's investigative efforts.

In response to congressional concerns about the issues raised in our March 1986 report, INS developed an overall strategy and plan for investigating, apprehending, and deporting criminal aliens called the alien criminal apprehension program (ACAP). The program was pilot tested in four cities--Chicago, Miami, Los Angeles, and New York. In general, ACAP's strategy calls for a more proactive approach to identifying and removing criminal aliens from the streets and country and developing closer working

relationships with federal, state, and local law enforcement agencies. The strategy includes

- o increasing INS participation in joint task force efforts with other law enforcement agencies, particularly those relating to narcotics;
- o coordinating INS efforts with law enforcement, judicial, prosecutorial, and correctional officials at all levels to help identify and process aliens involved in crimes at the earliest stages of the criminal justice system; and
- o obtaining the cooperation of immigration judges to hold hearings for incarcerated criminal aliens to ensure their immediate removal from the country upon their release.

According to INS, the program started in the four cities in December 1986 but has not been expanded to other cities.

In recent legislation Congress expressed its concern that INS give greater attention to the identification and removal of criminal aliens from the country. The Immigration Reform and Control Act of 1986 directed INS to begin deportation proceedings against aliens with deportable offenses as expeditiously as possible after their convictions. In addition, the Anti-Drug Abuse Act of 1986 required law enforcement officials to notify

INS when they arrest on drug charges any individual they suspect of being an alien here illegally.

The Anti-Drug Abuse Act of 1988 also provides for expedited deportation hearings for aliens who are convicted of aggravated felonies--murder and drug and weapons trafficking. The 1988 act added the requirement that the Attorney General provide for special deportation proceedings to be held at federal, state, and local correctional facilities for these felons. Proceedings are to be initiated and, if possible, completed before these aliens finish serving their sentences. If not, INS is required to take the aggravated felons into custody after their sentences are completed and detain them until they are deported.

Previous to the 1988 act, an institutional hearing program existed and is still in operation. Under the program, immigration judges have held deportation hearings for criminal aliens while they are still incarcerated. For the period May 1988 to August 1989, EOIR received 4,450 cases, the judges rendered decisions on 4,025 and 425 were still open. In addition, as of August 31, 1989, INS requested deportation hearings for 139 aggravated felons, as defined in the Anti-Drug Abuse Act of 1988.

INS estimates that over 72,000 aliens will be arrested yearly on felony drug charges. For those convicted, INS will need to

complete deportation proceedings before they are released from prison. If INS has not completed such proceedings by that time, INS will have to take them into custody at the conclusion of their sentences.

Under the President's Management by Objectives system, the Department of Justice has designated the expeditious deportation of criminal aliens as a 1990 objective. INS had already made the expeditious removal of criminal aliens one of its four operational priorities.

OTHER FACTORS

AFFECTING DEPORTATION

Further complicating the deportation process are aliens' right to contest deportation and aliens' failure to appear for scheduled deportation hearings. We believe it is important to note that, in part, because of these factors, deportation cases can take years to complete. Our report--Immigration Control: Deporting and Excluding Aliens from the United States (GAO/GGD-90-18, Oct. 26, 1989)--discusses issues effecting INS' ability to deport aliens including those involved in criminal activity.

We pointed out that during 1987 in New York, for example, an estimated 56 percent of 2,305 deportation cases lasted 1 year or more from the date the alien was apprehended to the date of the

immigration judge's decision. An estimated 11 percent of the cases in New York lasted more than 7 years. When the aliens exercise their rights to request hearing adjournments, apply for relief from deportation (e.g. request for asylum), or appeal adverse decisions, these actions contribute to the length of time to process a deportation case. For example, in New York, 20 percent of the cases had more than five adjournments.

Another complicating factor is that aliens may fail to appear for deportation hearings. We estimated that during 1987 about 27 percent of the apprehended aliens failed to appear for their deportation hearings in New York and Los Angeles. Most had attended at least one hearing before not appearing at a following hearing. Although immigration judges can hold hearings in absentia and issue final decisions on deportation of aliens who fail to appear, they have been reluctant to do so. In addition, our December 1986 report--Criminal Aliens: INS' Detention and Deportation Activities in the New York City Area (GAO/GGD-87-193R, Dec. 3, 1986)--pointed out that in New York, 24 percent of 474 criminal aliens released by INS from its detention facility absconded pending their deportation hearings.

In our October 1989 report, we made recommendations to Congress and the Attorney General to address the problem related to aliens who fail to appear for their deportation hearings by limiting their use of INA relief and appeal provisions.

CONCLUSION

INS recognizes that it can identify more deportable aliens who have been involved in crime by changing its strategy to focus on aliens when they initially come in contact with the criminal justice system. However, INS also recognizes that its resources are not sufficient to fully implement the strategy. Thus, INS has focused its efforts primarily at aliens who are in prisons. In our opinion, this approach, although not the preferred one, seems reasonable given INS' resources. The Administration and Congress need to decide whether additional resources should be directed to the identification, apprehension, and deportation of criminal aliens considering the competing demands for federal funds.

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This concludes my prepared statement. We would be pleased to respond to any questions.