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CRIMINAL ALIENS

**INS' Efforts To Identify And
Remove Imprisoned Aliens
Need To Be Improved**

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Criminal Aliens: INS' Efforts to Identify and Remove Imprisoned Aliens Need to Be Improved

The Institutional Hearing Program (IHP) is the Department of Justice's main vehicle for placing aliens who are incarcerated in federal and state prisons into deportation proceedings so that they can be expeditiously deported upon release from prison. In fiscal years 1995 and 1996, Congress authorized dedicated IHP staff to help expand and enhance the program.

The Immigration and Naturalization Service (INS) has not fully complied with the law's requirements concerning criminal aliens who committed aggravated felonies, nor has it realized the full potential of the IHP. INS did not identify many deportable criminal aliens before their release from prison. For the second half of fiscal year 1995, this resulted in nearly 2,000 criminal aliens, including some aggravated felons, being released into U.S. communities without an INS determination of the risk they posed to public safety. GAO asked INS to determine whether there had been post-release criminal activity by 635 of these criminal aliens. INS determined that 23 percent had been rearrested for crimes, including 183 felonies.

INS did not complete the IHP for the majority of criminal aliens who were identified as potentially deportable and were released from federal and five state prisons during the last 6 months of fiscal year 1995. INS was able to more quickly remove from the country those aliens for whom it completed the IHP with final deportation orders than those aliens for whom it completed deportation hearings after their prison release. If INS had completed proceedings for all aliens released from state and federal prisons in fiscal year 1995 before their release, it could have avoided nearly \$63 million in detention costs.

INS' efforts to improve the IHP have encountered several impediments. The federal Bureau of Prisons and some states have accepted INS' proposals to make the processing of aliens more efficient, but others have not. Further, INS did not staff the IHP at the expected levels because of hiring delays, agent attrition, and the use of lower graded agents to replace rather than supplement higher graded agents already working on IHP cases. Finally, INS' top managers did not adequately respond to identified IHP performance problems.

GAO is making recommendations designed to help INS realize more of the IHP's potential.

Criminal Aliens: INS' Efforts to Identify and Remove Imprisoned Aliens Need to Be Improved

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss the Institutional Hearing Program (IHP), a cooperative program involving the Department of Justice and the states. The program's goal is to place incarcerated criminal aliens in deportation hearings so they can be readily deported upon their release from prison.¹ Removing deportable aliens—particularly criminal aliens²—has been the subject of congressional hearings and has been designated as a management priority at INS.

To assess the performance of the IHP, we reviewed INS activities and analyzed data on over 17,000 foreign-born individuals released from prisons in the last half of fiscal year 1995. Our work was designed to:

- determine the extent to which deportable criminal aliens were included in the IHP,
- assess the extent to which INS completed deportation hearings for deportable aliens during their time in prison or after their release, and
- assess INS' efforts to enhance the IHP.

We focused primarily on fiscal years 1995 and 1996 because during these years Congress provided additional resources for IHP operations, and INS initiated several measures intended to improve the IHP's effectiveness in deporting criminal aliens. We concentrated primarily on the activities of INS—as opposed to the Executive Office for Immigration Review (EOIR), which makes judicial decisions regarding deportability—because INS has the lead role in identifying incarcerated criminal aliens, determining their deportability, initiating deportation proceedings, and removing aliens from the United States. In addition, we focused on IHP activities in the federal Bureau of Prisons (BOP) and in five states that account for over 80 percent of the total number of incarcerated foreign-born inmates in the country. These states are Arizona, California, Florida, New York, and Texas.

To assess the extent to which hearings were initiated and completed, we reviewed INS' nationwide statistics on the IHP. To identify which released inmates were in or had completed deportation proceedings, we asked EOIR

¹Under revised provisions for the removal of aliens established in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, P.L. 104-208, aliens charged by INS as deportable are now placed in "removal" proceedings as opposed to "deportation" proceedings. For consistency, we refer to these proceedings as deportation hearings or proceedings throughout this testimony.

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

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to do a computer match of EOIR data with data from BOP and seven states³ on foreign-born aliens released in the last half of fiscal year 1995. To gather data on aliens taken into INS custody and removed, we asked INS to match the data obtained from BOP and the seven states against INS' Deportable Alien Control System. In addition, we asked INS to extract certain information from alien files for a random sample of released foreign-born inmates.⁴ To assess INS' success in enhancing the IHP, we interviewed INS, BOP, and EOIR officials in headquarters and field locations and state corrections department staff. We also reviewed INS plans, performance reports, and other documentation on the IHP. (See app. II for a more detailed description of our scope and methodology.) Our work was conducted between January 1996 and July 1997 in accordance with generally accepted government auditing standards.

Based on information developed from interviews, documentary review, and analyses of data from large automated databases and from alien case files, our assessment of the IHP's performance is that it falls far short of its overall goals. We found that (1) INS failed to identify many deportable criminal aliens, including aggravated felons, and initiate IHP proceedings for them before they were released from prison; (2) INS did not complete the IHP by the time of prison release for the majority of criminal aliens it did identify; and (3) INS has not realized several intended enhancements to the IHP.

Background

Criminal aliens cost our criminal justice systems hundreds of millions of dollars annually and 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 provided for the initiation of deportation proceedings for certain criminal aliens while incarcerated, expanded the types of crimes for which aliens could be deported, and 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 deportation 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,

³In addition to the five states, we also obtained data on Illinois and New Jersey. As explained in appendix II, these states were dropped because data from these states' corrections departments could not be reliably matched with INS' data.

⁴When foreign-born inmates are interviewed to determine their deportability, INS agents are to document the interview in the aliens' files, which are referred to as "A-files."

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defined the crimes of murder and drug or weapons trafficking as “aggravated felonies” and required INS to begin and, to the extent possible, complete deportation proceedings for aggravated felons before their release from prison. It also required that INS take all such aggravated felons into custody upon completion of their sentences. In the early 1990s, the law was changed to allow INS to release aggravated felons from custody if they were lawfully admitted aliens, were not a threat to the community, and were likely to appear for their deportation hearings. However, beginning in October 1996, under provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, P.L. 104-208 (1996 Act), INS is required to take into custody a much larger class of criminal aliens beyond aggravated felons.⁵

The IHP Process

INS agents generally rely on state and federal corrections personnel to notify them of incoming prisoners who state they are foreign born or whom corrections personnel identify as foreign born. Corrections personnel 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 prisoners to determine their deportability. The INS agents who screen foreign-born prisoners may be permanently assigned to a state or federal prison or may travel to the prison from their official duty stations. 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 a criminal alien is to be used to prepare an Order to Show Cause, a document that charges the alien with having committed a deportable offense. INS attorneys are to review the order for legal sufficiency and file it with EOIR. EOIR is to schedule an initial hearing and notify the alien. Once the alien is notified, the alien is included in the IHP. 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.⁶ The alien may

⁵The 1996 Act made major changes to immigration law and procedures, many of which went into effect on April 1, 1997. Since our review focused primarily on fiscal years 1995 and 1996, the changes in the 1996 Act are generally not reflected in this testimony.

⁶The 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 is to advise the alien of the availability of free legal service programs and ensure that the alien has been given a list of such programs.

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immediately accept an order for deportation. Alternatively, 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 deportation. After all the evidence is presented, an immigration judge renders a final decision. If the alien is ordered deported, a deportation order referred to as a "final order of deportation" is to be served on the alien.

The IHP ends when the alien is released from prison (1) with a final decision that either orders the alien deported, grants the alien relief from deportation, or closes the case in some other manner;⁷ or (2) prior to a final decision on the case. INS is required to take certain deportable aliens into custody, whether or not the IHP proceedings have been completed.⁸ Those for whom the IHP proceedings are completed by issuance of a final order of deportation are to be held in detention until they are removed from the United States. A flow chart of the IHP process is in appendix III.

**INS Failed to Identify
Many Deportable
Criminal Aliens,
Including Aggravated
Felons, Who Were
Released From Prison**

INS does not have information on all imprisoned criminal aliens. As a result, INS has no assurance that it complied with the legal requirements that it (1) place criminal aliens who had committed aggravated felonies in deportation proceedings while they are incarcerated, or (2) take those aggravated felons into custody upon their release from prison.

Our analysis of data on 17,320 foreign-born inmates released from BOP and 5 state prisons during the last half of fiscal year 1995 showed that INS and EOIR databases had no indication that IHP procedures had been initiated for nearly 6,000 individuals. To determine why these individuals were not in INS' database—for example, whether INS may have screened them for the IHP and/or put them into deportation proceedings without recording the information in its database—we drew a random sample of these cases and asked INS district offices to extract relevant information from individual

⁷IHP proceedings may be discontinued by an immigration judge in several ways other than the issuance of a final order of deportation or the granting of relief from deportation, including (1) administrative closure for such reasons as the alien did not appear for a hearing, and the judge decided that the alien was not properly notified; (2) a change of venue, whereby the immigration judge transfers the case to another immigration judge's jurisdiction, as can occur when an alien who starts IHP proceedings is released before the case is completed; and (3) termination, when the immigration judge decides that insufficient grounds exist to issue a final order of deportation, and the alien is allowed to remain in the United States.

⁸During the time of our review, INS was required to take into custody and detain criminal aliens convicted of aggravated felonies. Lawfully admitted aliens who did not pose a threat to the community and who were deemed likely to appear for their hearings could be released. Criminal aliens not convicted of aggravated felonies could be taken into custody and then could be released on bond or on their own recognizance, pending completion of deportation proceedings.

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alien files. On the basis of 329 responses obtained from INS districts in Arizona, California, New York, and Texas, and from BOP, we found that INS could not determine whether it had interviewed many of these foreign-born inmates to determine their deportability.⁹

We requested INS' Law Enforcement Support Center (LESC) to conduct a follow-up search to help determine whether any of the nearly 6,000¹⁰ released inmates were potentially deportable criminal aliens. LESG identified 1,899 of these foreign-born inmates as deportable criminal aliens because of their immigration status and the nature of the crime they had committed. Although aliens meeting these criteria are to be screened by INS and put into deportation proceedings as expeditiously as possible following their convictions, there was no indication in INS' or EOIR's databases that these actions occurred while the aliens were in prison or after they were released.¹¹

Under the law, INS is required to initiate deportation proceedings against aggravated felons while they are in prison and take them into custody upon their release.¹² Because the definition of "aggravated felony" has been expanded several times since it was first created in 1988, determining whether a criminal alien would have been classified as an aggravated felon at the time of his or her release depends on the definition in effect at the time of conviction in some cases, and the date of commission of the offense in other cases. LESG identified 635 of 1,899 released criminal aliens as having committed crimes that were defined as aggravated felonies at the time that LESG did its analysis—July 1996 through March 1997. However, LESG told us that it was not possible for it to determine whether all of these 635 aliens had committed crimes that were considered aggravated felonies at the time they were convicted because doing so

⁹Our sample was originally designed so that we could statistically estimate how many of the nearly 6,000 cases were interviewed, placed in deportation proceedings, or did not have any indication of having been interviewed by INS. However, an error in the computer matching done by INS resulted in INS having to redo the match and send us new data. Because our sample was drawn before the error was detected, we are not able to make statistical projections from the case file review.

¹⁰There were 5,884 foreign-born inmates whom BOP and the 5 states told us were released from prison but were not contained in INS and EOIR databases. LESG checked the records of 5,109 of these released inmates.

¹¹The Department of Justice's Office of Inspector General reported in September 1995 that some states had substantial numbers of foreign-born inmates who had not been interviewed and processed through the IHP. The report concluded that if INS did not eliminate the existing backlogs, foreign-born inmates would be released into the community without INS having identified them as deportable.

¹²As discussed earlier, under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, beginning October 1996, INS is required to take into custody a larger group of criminal aliens than aggravated felons.

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would be too resource intensive. Although LESC was unable to determine the history of all of the 635 aliens

who were released, it identified some who had committed crimes that met the aggravated felony definition either at the time of the offense or at the time of their conviction.

According to INS and EOIR databases, none of the nearly 6,000 aliens had been in deportation proceedings while they were in prison or afterward, had been taken into INS custody, or had been deported. We asked INS to follow up on the post-release criminal activities of the 635 aggravated felons. In a July 11, 1997 letter, INS told us that:

- 148 of the 635 have been rearrested since their release,
- 31 of the 635 have been rearrested more than once,
- the 148 aliens were charged with committing 184 felonies; and
- 114 of the 148 have been convicted.

INS Did Not Complete the IHP for a Majority of Released Criminal Aliens, Resulting in Avoidable Detention Costs Amounting to Millions of Dollars

INS' overall goal for the IHP is to have all deportable criminal aliens released from federal and state prisons with final deportation orders. However, according to IHP and other INS managers, they recognized that, for various reasons, INS would not have sufficient staff to enable INS to complete deportation proceedings for all criminal aliens in all states while they were in prison. Therefore, for fiscal years 1995 and 1996, INS set nationwide operational goals that were lower than INS' desired goal for the IHP. Specifically, for fiscal years 1995 and 1996, respectively, INS' operational goals were that about 30 and 40 percent of the criminal aliens whom it took into custody would have completed deportation proceedings with final deportation orders prior to their release from prison and would be removed.¹³ The goals were based on IHP managers' estimates of the number of aliens who could be processed through the IHP and removed. It was necessary to produce estimates using this method because INS did not have a formal workload model that would systematically take into account such factors as the projected number of foreign-born inmates, number of prisons that must be visited, number and types of IHP staff expected to be available, length of time required to process cases, and travel time and costs. Further, although district directors make resource allocation decisions for their districts, and are directly responsible for implementing

¹³INS' operational goals for fiscal years 1995 and 1996, respectively, were to complete hearings for, take into custody, and remove 8,250 and 13,400 criminal aliens nationwide.

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the IHP, top management officials did not allocate the national operational goals among the district directors with IHP responsibilities.

In each of fiscal years 1995 and 1996, INS completed the IHP for, obtained a final deportation order for, and deported about 32 percent of the released criminal aliens that it took into custody from federal and state prisons. Relative to its operational goals, INS exceeded the fiscal year 1995 goal of 30 percent and fell short of the fiscal year 1996 goal of 40 percent. However, relative to its overall goal of 100 percent, INS did not complete the IHP for and remove approximately two-thirds of the criminal aliens it took into custody upon their release from state and federal prisons in either of these 2 years.

INS' data on the IHP are limited because, as discussed earlier, INS has not identified all individuals who are foreign-born inmates in the BOP and state prison systems and does not maintain a centralized database of these individuals, which would enable it to routinely track the IHP status of all potentially deportable inmates. Therefore, it could not readily determine where individuals were in the IHP process, nor could it readily provide summary information on the number of criminal aliens who had committed aggravated felonies. Consequently, we performed an analysis of data on foreign-born inmates who, according to BOP and the corrections departments of the five states we reviewed, were released from their prison systems during the last 6 months of fiscal year 1995 and, according to INS and EOIR data, were potentially deportable. There were 11,436 released inmates in this population. We found that 40 percent of these aliens left prison with a final deportation order (having completed the IHP), 3 percent left prison without a deportation order but with INS having completed the deportation hearing process, and INS completed the process for 49 percent after they were released from prison. For the remaining 8 percent of cases, there was no indication that hearings were completed either before or after prison release. Appendix IV shows the variation among the states and BOP in the number of foreign-born inmates who completed the hearing process.

Our analysis 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. Of the aliens for whom INS started deportation hearings before prison release and completed them after release, 75 percent were removed in about 5 weeks after their release. However, among the aliens for whom INS started and completed

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the hearing process after their release from prison, it took about 1 year before 75 percent were removed.¹⁴

Not completing deportation proceedings during incarceration means that INS has to use its limited detention space to house most released criminal aliens rather than using the space to detain other aliens. INS acknowledges that it incurs detention costs for housing these aliens when these costs could be avoided. On the basis of INS' nationwide data for fiscal year 1995, we estimated that INS could have avoided nearly \$63 million in detention costs for aliens who were released before INS completed the IHP process.¹⁵

**INS Has Not
Enhanced the IHP to
the Extent Intended**

Since 1994, INS has focused its efforts on improving IHP operations in BOP and in seven states—Arizona, California, Florida, Illinois, New Jersey, New York, and Texas—which INS estimates account for 86 percent of the criminal aliens incarcerated in state and federal prisons. INS developed formal enhancement plans for BOP and the seven states. These plans were generally designed to improve efficiency by reducing the number of intake, hearing, and release sites and by increasing IHP staffing. INS also made the removal of criminal aliens an INS management priority.

We reviewed the status of INS' enhancement efforts in BOP and four states—California, Texas, Florida, and New York. Our work has shown that several factors have slowed INS' efforts to improve the operations of the IHP. First, through the enhancement plans, INS generally sought to reduce the number of state prison facilities that served as intake, hearing, and release sites for foreign-born inmates. However, INS needed the states' approval to implement such a reduction, and approval was not always forthcoming. On the one hand, several states reduced the number of sites they had been operating: for example, Texas went from about 25 release sites to a single facility. On the other hand, some states did not consolidate their IHP sites to the extent INS had wanted. For example, Florida would not agree to reduce the number of release sites to less than 15, citing security concerns as a reason for not further reducing the number of sites.

Second, INS did not achieve its expected staffing levels for the IHP in fiscal years 1995 and 1996 for several reasons:

¹⁴For those aliens who were deported, appendix V contains a fuller analysis of the time that elapsed between their release from prison and their deportation.

¹⁵See appendix VI for a discussion of how we estimated these costs.

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- Because of budget and funding delays, INS could not hire new agents for the IHP until about 6 months into each of fiscal years 1995 and 1996. In fiscal year 1995, INS did not authorize hiring for newly established IHP positions until February 1995. In fiscal year 1996, according to INS budget staff, Congress did not approve INS' budget until almost 7 months into the year. Because it takes about 2 months to recruit and screen applicants for these positions and about 4 months to train them, many of the newly hired agents who required training were unavailable to work on the IHP in the fiscal year in which their positions were funded.
- INS did not clearly communicate to its field offices whether newly hired immigration agents were to replace or supplement the special agents already assigned to the IHP. Top INS managers who were tasked with overseeing the IHP told us that they expected that newly hired agents would supplement special agents already assigned to the IHP. However, the officials were not able to provide us with documentation that they formally communicated this to the INS districts where immigration agents were assigned. Because INS district directors have authority to adjust programmatic staffing levels, some districts used the new immigration agents as supplements, and other district directors used them as replacements for special agents assigned to the IHP. For example, the Dallas district director increased IHP staffing because he assigned three new immigration agents to supplement the two special agents already processing IHP cases at a BOP facility. In contrast, the New Orleans district director reassigned two special agents who were working on IHP cases and replaced them with five newly hired immigration agents. As a result, although the number of agents assigned to the IHP in the New Orleans district increased, it was two fewer than the number of agents that the lead official expected would be assigned to the IHP.
- Immigration agent attrition was also a problem. For example, in fiscal year 1996 the average attrition rate for all INS staff was about 11 percent. In comparison, the attrition rate for immigration agents was about 30 percent.¹⁶ According to INS, one reason for this relatively high attrition rate was that immigration agents who were hired to staff the IHP left for potentially better paying positions within INS, such as that of special agent. Immigration agents are limited in their benefits and advancement opportunities, but they often possess many of the qualifications required for INS positions with greater pay and advancement potential; thus, they were competitive for filling vacancies in those potentially better paying positions.

¹⁶These attrition rates represent only the internal organizational movement of INS staff from one INS position to another and do not include losses to other employers.

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Third, although INS has designated the removal of criminal aliens, through the IHP and other programs, as a key management priority, top management officials did not adequately respond to identified problems with the IHP. INS' fiscal year 1996 mid-year and third quarter progress reports, prepared by the IHP staff for top management, stated that INS would fall short of its IHP goal at the current productivity rate. INS criteria indicate that when resources are not adequate to accomplish program objectives, lead officials for the priority areas must either identify necessary changes in the work processes to increase productivity in order to meet the goal, or they must propose modifying the priority objective to match realistic expectations of available resources. However, top management officials did not revise the goals or, alternatively, develop a plan of action to ensure that INS would meet its goal. As discussed earlier, in fiscal year 1996, INS fell short of its IHP operational goal.

Conclusions and Recommendations

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. However, the IHP is a resource-intensive program that relies in large part on the cooperation of BOP and the state departments of corrections. To date, some of the states INS has approached about IHP enhancements have not cooperated to the extent that INS has sought. Further, INS has not implemented the IHP in a way that would ensure optimum performance, nor has it systematically determined what resources would be needed to achieve that level of performance.

We believe that INS can take steps that will improve the operations of and outcomes from the IHP. First, INS needs better information about prison inmates—more specifically, which inmates are eligible for the IHP and which of these inmates have been and have not been included in the program. Our work has shown that INS' databases do not contain complete and current information on the IHP status of individual foreign-born inmates at any given point in time. We could not use INS' data to determine which of the released foreign-born inmates had been screened for the IHP, identified as deportable, or placed in the hearing process.

Therefore, we recommend that the Commissioner 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.

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Second, the law requires INS to take certain actions with regard to criminal aliens who have been convicted of aggravated felonies beyond those required for other criminal aliens. As mentioned above, INS is required by law to initiate and, to the extent possible, complete deportation proceedings against aggravated felons while they are in prison and to take them into custody upon their release. Yet our work shows that INS did not fully comply with the required provisions of the law in effect prior to 1996.

Therefore, we recommend that the Commissioner give priority to aliens serving time for aggravated felonies by establishing controls to ensure that these aliens are identified from among the universe of foreign-born inmates provided by BOP and the states, are placed into deportation proceedings while in prison, and are taken into custody upon their release.

Third, INS has established IHP performance goals without having a systematic basis for determining what performance results it could accomplish with various resource levels. We found that INS has 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 deportation proceedings for every eligible foreign-born inmate before release or for alternative operational goals.

Therefore, we recommend that the Commissioner (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 should 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.

Fourth, the relatively high attrition rate among immigration agents in fiscal year 1995 contributed to the IHP not being fully staffed and adversely affected INS' attainment of the IHP goals. Although INS officials point out that the immigration agent position has been a stepping-stone to higher level positions within INS, we do not know the specific root causes for the attrition rate.

Therefore, we recommend that the Commissioner identify the causes of immigration agent attrition and take steps to ensure that staffing is adequate to achieve IHP program goals.

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Finally, our work has shown that INS top management did not provide attention commensurate with the priority it assigned to the program. Top management did not formally communicate to the district directors how additional staff should be used in the IHP, did not ensure that specific operational goals were established for each INS district director with IHP responsibilities, and 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 recommend that INS establish and effectively communicate a clear policy on the role of special agents in the IHP and, using a workload analysis model, set IHP goals for district directors with IHP responsibilities. In addition, if it appears that IHP goals will not be met, INS should document any actions taken to correct the problem.

Agency Comments

On June 12, 1997 and July 11, 1997, we briefed the Executive Associate Commissioner (EAC) for Programs and other officials from INS' Office of Programs, General Counsel, Field Operations, Internal Audit, and Congressional Relations, and they generally concurred with our findings, conclusions, and recommendations. With regard to our recommendation on identifying causes of immigration agent attrition, the EAC for Programs noted that INS believes that immigration agent attrition is no longer as high as it used to be. He added, however, that INS plans to undertake a broad examination of the immigration agent position, including benefits, flexibility, and vacancies.

Mr. Chairman, this completes my statement. I would be happy to answer your questions at this time.

Definition of “Alien” and “Criminal Alien”

Alien

An alien is any individual who is not a citizen of the United States, regardless of whether the individual’s 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 the Immigration and Naturalization Service (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 period of time authorized.

Criminal Alien

Criminal aliens are noncitizens who have been convicted of a crime committed in this country for which they could be removed from the United States. At the time of our review, most aliens were placed in deportation proceedings to effect their removal. Some aliens were placed in exclusion proceedings because, from a legal standpoint, they were not deemed to have actually entered the country. As an example of such a situation, aliens may arrive at U.S. airports, declare their intent to seek political asylum, and be temporarily allowed into the United States pending a determination of their cases. Because such aliens were not considered to have formally entered the United States, they would be placed in exclusion rather than deportation proceedings if convicted of a deportable offense before their asylum cases were resolved. We use “deportation proceedings” or “deportation hearings” in this testimony to refer to both deportation and exclusion proceedings. Under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, deportation and exclusion proceedings are now referred to as removal proceedings.

Scope and Methodology

We reviewed IHP plans and activities for BOP and the corrections systems of seven states—Arizona, California, Florida, Illinois, New Jersey, New York, and Texas. We selected these states because, in March 1996, their corrections systems accounted for 86 percent of the total number of foreign-born inmates reported as incarcerated in state institutions. In addition, INS has targeted its additional resources for IHP initiatives to these seven states and BOP.

We focused primarily on fiscal years 1995 and 1996, because during these years Congress provided additional resources for IHP operations, and INS initiated several measures to improve the IHP's effectiveness in deporting criminal aliens. We concentrated on INS—as opposed to EOIR, which makes adjudicative decisions regarding deportability—because INS has the lead role in identifying incarcerated criminal aliens, determining their deportability, and initiating deportation proceedings.

To assess the IHP's performance, we analyzed INS documents and statistics on IHP performance goals, measures, and results to determine (1) how the IHP's performance in deporting incarcerated criminal aliens changed during fiscal years 1995 and 1996 and (2) the extent to which INS was meeting its IHP goals.

In addition, we sought to determine whether INS was screening the entire universe of foreign-born inmates identified by corrections personnel and the extent to which IHP-eligible inmates were placed into deportation 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 institutions in seven states on all of the foreign-born inmates they released from April through September 1995. The data from the April to September 1995 period are considered to be representative of the entire year. We did not determine the completeness of the lists of foreign-born inmates provided either to us or to INS. We asked INS to match these records 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, detained, or removed from the United States. Although we did not independently assess the reliability of DACS data in this review, we addressed questions to INS about what, if any, quality controls and procedures are used to ensure the reliability of those data elements that we used in this review. The data elements included whether the alien was (1) taken into custody, (2) issued a final deportation order, and (3) 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 every time an officer submits a case for review. Further, they reported that all of these data elements are entered into DACS , although,

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 match the records against information in its Automated Nationwide System for Immigration Review (ANSIR) to identify those released foreign-born inmates who had been in deportation proceedings. Again, although we did not independently assess the database's reliability, we addressed questions to EOIR about what, if any, quality controls and procedures are 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 deportation proceedings and (2) the outcome of the proceedings. EOIR personnel who operate and manage the ANSIR database 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 EOIR staff are held to high performance standards with respect to data integrity.

From these data matches, we determined for BOP and five states¹⁷ how many of the foreign-born inmates were included in and completed the IHP prior to prison release, how many completed deportation proceedings after release, and how many had started but had not completed proceedings at the time we completed our review. For those who were issued a final order of deportation, we were able to determine how many had been removed from the United States by January 1997. We selected the April through September 1995 time frame because we wanted to follow up on how many criminal aliens had completed deportation proceedings and been removed from the United States. We did our followup approximately 16 to 22 months after the aliens' release from prison.

About 6,000 of the approximately 17,300 foreign-born released inmates were not in either INS' or EOIR's database. We sought to determine the extent to which this sizable unmatched group consisted of (1) cases that

¹⁷We dropped two additional states from our analysis, Illinois and New Jersey, because data obtained from these states' corrections departments could not be reliably matched with INS' data. Without a unique identifier, such as an A-number, that is common to both databases, we would have had to rely on such information as names and birthdates, which are not a conclusive way of identifying individuals.

were screened for inclusion in the IHP and perhaps even processed through the IHP but not entered into the appropriate databases; (2) foreign-born U.S. citizens who are not eligible for the IHP; or (3) criminal aliens who should have been, but were not, included in the IHP and were released from prison without being taken into INS custody.

We took two steps to determine the composition of the group of nearly 6,000 unmatched cases. First, we selected a random sample of several hundred of these cases from BOP and seven states and asked INS district staff to review the original case files for each of these individuals. Our purpose was to determine whether there was information in the files that had not been entered in DACS. Second, we asked LESC—an INS unit that conducts database searches for local law enforcement agencies to determine whether arrested individuals are criminal aliens—to match the nearly 6,000 records with information contained in 6 INS databases,¹⁸ the FBI'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 were deportable criminal aliens who were released from prisons; and (3) whether any identified criminal aliens had been convicted of committing an aggravated felony.

To determine what actions INS took to improve the operations and effectiveness of the IHP, we reviewed formal plans approved by the INS Commissioner to streamline IHP operations in each of the seven key states as well as in BOP. We examined documents pertaining to the roles of IHP staff and the allocation of staff resources to the IHP. Additionally, we reviewed INS planning documents pertaining to the removal of criminal aliens and the IHP's annual goals.

In addition, we interviewed key officials at INS and BOP headquarters and in corrections departments and INS field locations in California, Florida, New York, and Texas. We selected these four states for site visits because they represented four of the five states where IHP enhancement efforts began, and because they had the largest number of foreign-born inmates among all state correctional facilities. Resource constraints precluded our visiting all seven states. We interviewed INS and BOP officials at BOP's Oakdale, LA, and La Tuna, NM, federal correctional institutions and INS' El Paso, TX, district office. We chose the Oakdale facility because it was the first IHP

¹⁸The six databases searched by LESC were (1) the Central Index System (CIS), (2) the Computer-linked Application Information Management System (CLAIMS), (3) the Deportable Alien Control System (DACs), (4) the National Automated Immigration Lookout System II (NAILS II), (5) the Nonimmigrant Information System (NIIS), and (6) the Student and Schools System (STSC).

site in a federal prison and because it was one of two sites staffed full-time by INS personnel and immigration judges. We chose the La Tuna facility because, in contrast to Oakdale, the facility has neither full-time INS staff nor immigration judges at the facility.

To determine what factors have influenced the IHP’s performance and INS’ implementation of IHP enhancement initiatives, we interviewed officials with INS, EOIR, and BOP; and officials in corrections departments in California, Florida, New York, and Texas. We discussed the overall status of IHP enhancement plans, including implementation barriers, with INS’ General Counsel and district counsel officials and the national coordinators for the BOP and state IHPs. We also reviewed periodic reports and other documentation on the IHP’s performance that INS and BOP officials provided to us.

Table II.1 shows the INS district that we visited to review BOP and state IHP activities and the districts’ regional office jurisdiction.

Table II.1: INS District Offices and Regions GAO Visited Reviewing BOP and State IHP Activities

INS district office	INS region	IHP focus					
		La Tuna, NM (BOP)	Oakdale, LA (BOP)	CA	FL	NY	TX
El Paso	Central	X					
Houston	Central						X
Los Angeles	Western			X			
Miami	Eastern				X		
New Orleans	Central		X				
New York	Eastern					X	
San Diego	Western			X			
San Francisco	Western			X			

Legend: X - Visited by GAO.

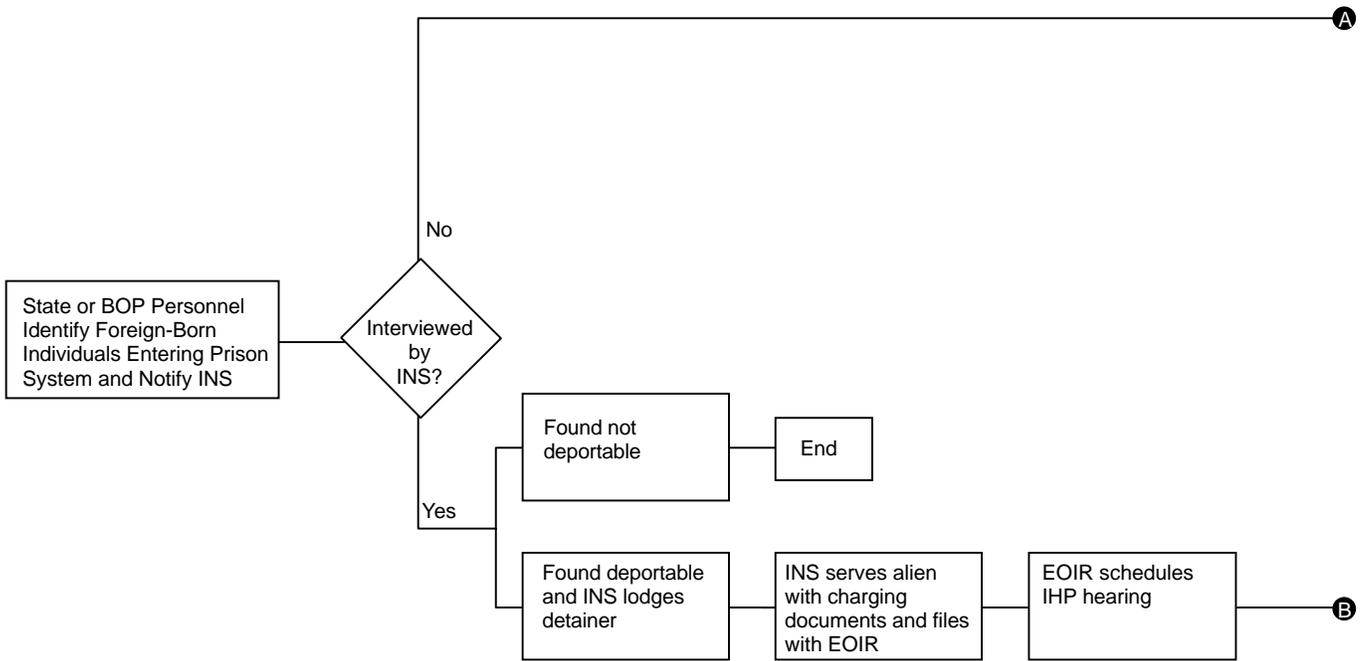
Source: GAO.

In each of the INS districts listed in the table, we interviewed key officials involved in IHP processing to document IHP roles and procedures, changes brought about by IHP enhancement initiatives, obstacles to progress toward a more efficient IHP, and the program’s overall status. Our INS contacts included district directors, assistant district directors for investigations, assistant district directors for detention and deportation, IHP directors and coordinators, and district counsel staff. At EOIR, we

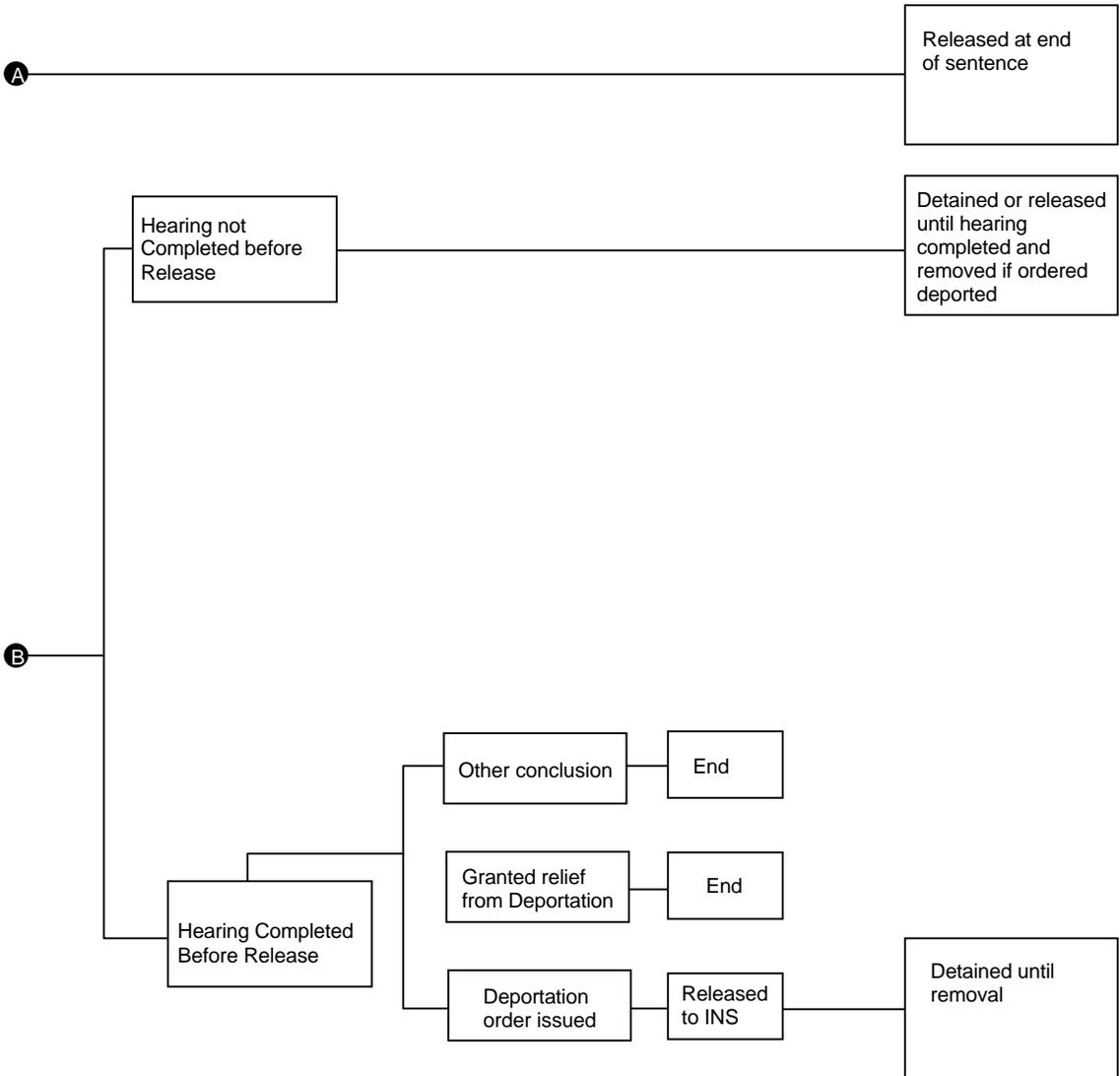
Appendix II
Scope and Methodology

interviewed immigration judges who conduct IHP hearings and court administrators who schedule deportation proceedings. We also interviewed BOP and state corrections system authorities to get their perspectives on the IHP and efforts to improve the program's performance.

The IHP Process



**Appendix III
The IHP Process**



Source: INS.

Disposition of Potentially Deportable Inmates Released From BOP and 5 States' Prisons Over a 6-Month Period in Fiscal Year 1995

Location	Potentially deportable cases (as indicated by INS/ EOIR data match)
	Number
Arizona	448
California	5,113
Florida	368
New York	960
Texas	530
BOP	4,017
Total	11,436

**Appendix IV
Disposition of Potentially Deportable
Inmates Released From BOP and 5 States'
Prisons Over a 6-Month Period in Fiscal
Year 1995**

Hearings completed before prison release		Hearings completed after prison release							
Potentially deportable cases completing the IHP		Potentially deportable cases completing the IHP with final order of deportation		Deportable cases completing hearing process		Deportable cases completing hearing process with final order of deportation		No evidence that hearings were completed before or after prison release	
Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
230	51	213	48	191	43	144	32	27	6
2,443	48	2,350	46	2,460	48	2,006	39	210	4
264	72	224	61	94	26	63	17	10	3
536	56	472	49	409	43	232	24	15	2
111	21	99	19	326	62	294	55	93	18
1,334	33	1,224	30	2,162	54	1,801	45	521	13
4,918	43	4,582	40	5,642	49	4,540	40	876	8

Time From Release to Deportation for Aliens Released From BOP and 5 States' Prisons^a During the Last Half of Fiscal Year 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	3,088	91	2,497	68	132	24
1 mo. to < 2 mos.	130	4	608	17	53	10
2 mos. to < 4 mos.	78	2	296	8	56	10
4 mos. to < 6 mos.	24	*b	105	3	46	8
6 mos. to < 8 mos.	18	*b	48	1	36	7
8 mos. to < 10 mos.	10	*b	33	*b	43	8
10 mos. to < 12 mos.	14	*b	31	*b	39	7
12 mos. and over	33	*b	55	1	145	26
Total	3,395^c	100	3,673^c	100	550^c	100

^aThe five states are Arizona, California, Florida, New York, and Texas.

^bLess than 1 percent.

^cOf 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); and 3,395 of them (74 percent) were deported by January 1997. Of 4,540 released criminal aliens who completed deportation proceedings after their release from prison, 4,223, or 93 percent, were deported by January 1997. Although INS has reported difficulty obtaining travel documents to some countries, we did not determine the specific reasons that aliens with final deportation orders were not removed quickly.

GAO Estimate of Avoidable Detention Costs

Because most criminal aliens released from state and federal prisons in fiscal year 1995 had not completed the IHP, INS needed to detain them until their deportation hearings could be completed. This placed unnecessary demands on INS' limited detention space, and, as shown below, cost INS nearly \$63 million that could have been avoided.

Table VI.1 INS' Detention Costs for Criminal Aliens Who Did Not Complete the IHP in Fiscal Year 1995

Hearing process	Criminal aliens released to INS from prison without final deportation orders (N = 20,118)	
	Started before prison release	Started after prison release
Estimated number of criminal aliens	17,498	2,620
Average avoidable days in detention ^a	26	191
Average daily detention cost	\$65.75	\$65.75
Fiscal year detention cost ^b	\$29,912,831	\$32,902,615
Total avoidable fiscal year detention cost	\$62,815,446	

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

^bAvoidable detention cost = number of aliens X average net days in detention X average daily detention cost.

Our sample of 11,436 potentially deportable criminal aliens released from BOP and five states' prisons during the second half of fiscal year 1995 included 6,518 inmates who were released to INS without INS having completed their hearing process while they were in prison. Nationwide, INS reported that in all of 1995, a total of 20,118 such inmates were released into its custody. Of the 6,518 released inmates that GAO studied, 4,223 inmates had received deportation orders and were deported by January of 1997. We were able to determine for 4,223 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 4,223 inmates, 87 percent started deportation proceedings in prison, and they were held for an average of 41 days. The remaining 13 percent started deportation proceedings after prison release and were held for an average of 206 days. For the remaining 2,295 inmates in our study, we assumed that the timing of deportation proceedings and the average number of days in INS detention were similar. The 2,295 inmates included (1) 876 inmates for whom there was no evidence that the hearing process was completed; (2) 1,102 inmates for whom the hearing process was completed after release from prison and no deportation order was issued; and (3) 317

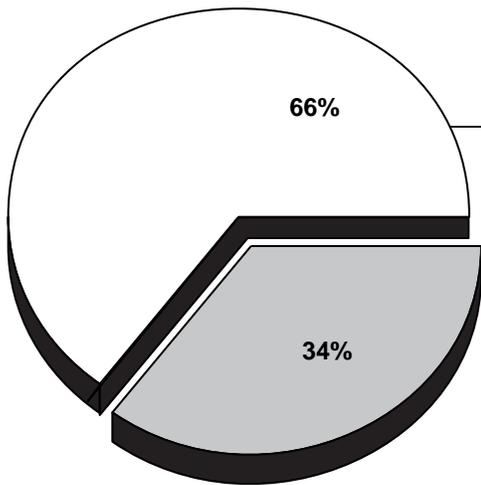
inmates for whom the hearing process was completed after release from prison and a deportation order was issued. This provides the estimate that for 87 percent, or 17,498, of the 20,118 released inmates, INS would have begun their hearing process before release, and for the remaining 2,620 released inmates, INS would have begun their hearing process after release.

To determine the avoidable detention cost, we subtracted 15 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 \$65.75 in fiscal year 1995.

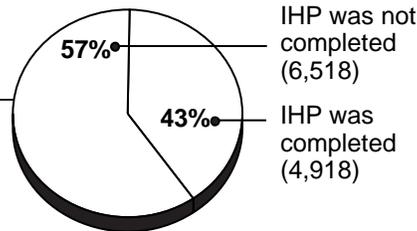
At least some of the savings in detention costs that INS could realize by processing more criminal aliens through the IHP would be offset by any additional funding that might be required to provide additional resources for the IHP.

INS Failed to Identify Many Deportable Criminal Aliens, Including Aggravated Felons

Foreign-born inmates released from prison
Apr.-Sept. 1995 (n = 17,320)



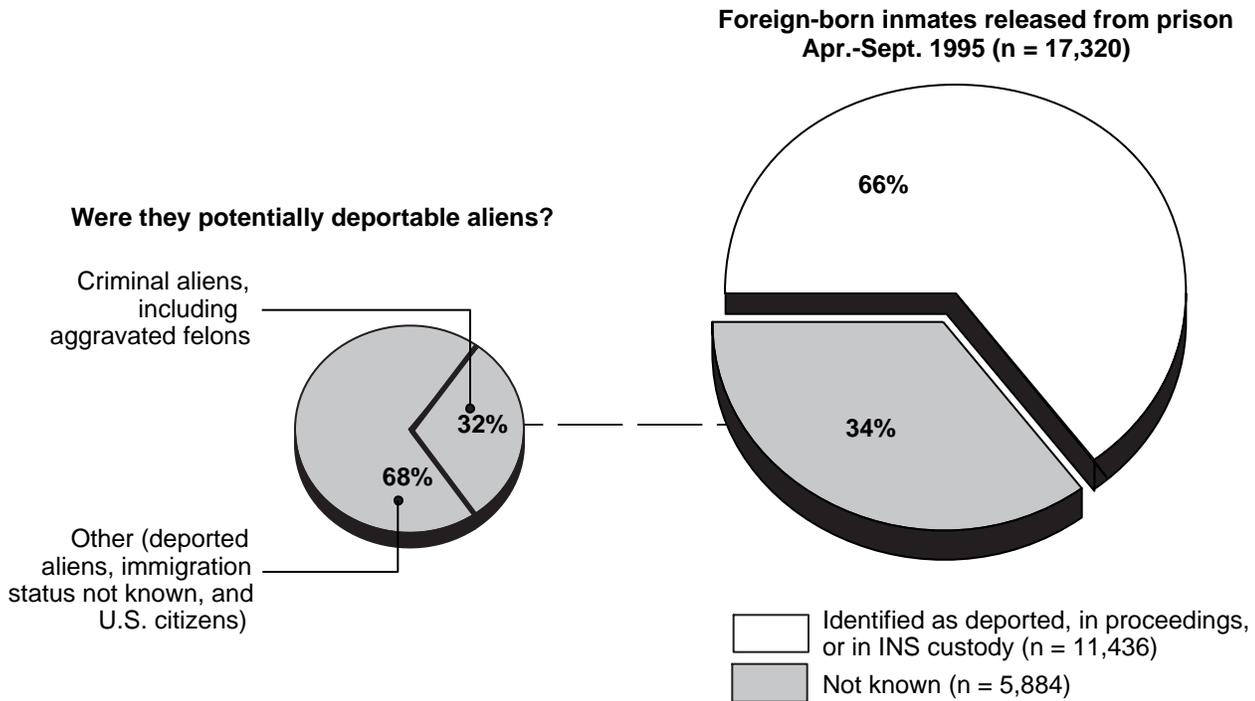
Was the IHP completed prior to prison release?



- Identified as deported, in proceedings, or in INS custody (n = 11,436)
- Not known (n = 5,884)

Source: INS.

IHP Was Not Completed for Most Released Criminal Aliens



Source: INS.

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