

GAO

Briefing Report to the Honorable
Alfonse M. D'Amato, United States
Senate

December 1986

CRIMINAL ALIENS

INS' Detention and Deportation Activities in the New York City Area



131959

RESTRICTED — Not to be released outside the General
Accounting Office except on the basis of specific approval
by the Office of Congressional Relations.

RELEASED

537516

OBJECTIVES, SCOPE, AND METHODOLOGY

By letter dated July 25, 1985, Senator D'Amato requested us to examine the effectiveness of the INS district office in New York in apprehending and deporting criminal aliens. In March 1986, we reported to Senator D'Amato on INS' activities in investigating and apprehending criminal aliens.² This report deals with the detention and deportation of criminal aliens after they have been apprehended. As agreed with the Senator's office, we examined

- the adequacy of security at the SPC in New York City,
- the results of bond and release procedures for deportable criminal aliens in terms of abscondee rates and crimes committed after release from INS custody,
- the feasibility of holding deportation hearings in state prisons for criminal aliens serving sentences there, and
- problems INS faces nationally in detaining Mariel Cubans who have been convicted of crimes but cannot be repatriated to Cuba.

In order to evaluate the security of the SPC, we held discussions with managerial and supervisory personnel at INS headquarters in Washington, D.C.; the Eastern Regional Office in Burlington, Vermont; NYDO; and Bureau of Prisons headquarters in Washington, D.C. We also examined policies, procedures, and records relating to detention, detainees, and guards; and observed the physical security and daily operations of the SPC.

To ascertain the results of bond and release procedures, we reviewed a random sample of 80 cases of 474 aliens designated by NYDO as criminals who arrived at the SPC between January 1, 1983, and December 31, 1985, and were subsequently released on bond or on their own recognizance. Projections from the sample are at the 95 percent confidence level with an error rate of plus or minus 10 percent.

To obtain information on the feasibility of holding deportation hearings in state prisons, we interviewed officials at INS headquarters, NYDO, the New York State Department of Correctional Services, the New York State Division of Parole, and the chief judge of the Executive Office for Immigration Review.

To obtain information on problems associated with detaining Mariel Cubans, we held discussions and reviewed appropriate documents at INS headquarters and visited SPCs which house Mariel

²GAO/GGD-86-58BR, March 10, 1986.



United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-222060

December 3, 1986

The Honorable Alfonse M. D'Amato
United States Senate

Dear Senator D'Amato:

This report responds to your request of July 25, 1985, and subsequent discussions with your office in which you asked us to obtain information about the Immigration and Naturalization Service's (INS) activities in apprehending and deporting criminal aliens in the New York City area and preventing them from reentering the United States. Criminal aliens can be deported because they have been convicted of certain crimes. They may be residing in the country legally or illegally.

As part of your request, we reported to you in March 1986 on INS' efforts to investigate and apprehend criminal aliens.¹ INS' efforts to prevent criminal aliens from reentering the country are the subject of another review that we are currently undertaking for you. This report deals with INS activities involving the detention and deportation of criminal aliens. We briefed your staff on the preliminary results of our review on June 26, 1986. The report summarizes and supplements the information presented at that briefing.

Our review was performed between March 17 and August 15, 1986, and was conducted in accordance with generally accepted government auditing standards. The results are summarized below and discussed in detail in the appendix, as are additional details concerning our objectives, scope, and methodology.

Security at the INS service processing center (SPC) in New York City is inadequate. The SPC, opened in April 1984, was intended to house a noncriminal population. Instead, it has been housing an increasing proportion of aliens with criminal backgrounds, many of them for lengthy periods of time. This trend is expected to continue.

As of April 29, 1986, 113 of the SPC's 168 detainees (67 percent) had criminal backgrounds, many with convictions for violent or drug-related crimes. When the SPC was designed, INS expected that 10 percent of the detainees would have criminal backgrounds, largely of a nonserious nature. INS also expected the average detainee to be housed for no more than 7 days, but 83 (49 percent) of the detainees in the SPC on April 29, 1986, had been

¹Criminal Aliens: INS' Investigative Efforts in the New York City Area, GAO/GGD-86-58BR, March 10, 1986.

detained for over a month and 30 (18 percent) for 6 months or more.

The unexpectedly large criminal population resulted from two factors. In 1983, INS began emphasizing the apprehension of criminal aliens being released from state prisons. Additionally, many Cubans who arrived in the United States during the 1980 Mariel boatlift have since been convicted of crimes and have served or are serving sentences in state and federal prisons. Since they cannot be deported due to the absence of a repatriation agreement with Cuba, INS must detain them indefinitely. As of June 23, 1986, 66 were in the New York SPC.

While in the SPC, some criminal aliens have continued to exhibit disruptive behavior.

- From April 1984 to August 1986, there were 13 escapes (5 from the facility, 8 from escort details) involving 31 detainees, at least 25 of whom were criminal aliens. As of August 2, 1986, 23 were still at large. There have also been 15 attempted or suspected attempted escapes, at least 6 of which involved criminal aliens.
- Several riots and near-riots have occurred which have required INS to mobilize additional personnel to supplement the SPC's guard force.
- Numerous assaults, incidents of contraband smuggling, and other instances of misconduct have occurred, many of which involve drugs and makeshift weapons.

Design and operational deficiencies at the SPC detract from a safe, secure, and orderly environment and make it difficult for INS to prevent escapes and control detainee misconduct. Following are the primary reasons for the security problems at the SPC.

- The few areas in which troublesome detainees can be segregated from the rest of the detainees are inadequate because these areas provide access to the SPC's administrative offices.
- The SPC's windows have been used in all five breakouts of detainees from the facility.
- The SPC's control post, its operations and communications center, is accessible to detainees.
- Firearms and ammunition are stored within the SPC's detention area in violation of INS and Bureau of Prisons (BOP) standards. INS policy limits storage to administrative areas. BOP, which operates most federal prisons, is more strict and

prohibits storage on the premises of a facility which houses violent felony offenders.

- The SPC lacks outdoor recreational facilities. Experts believe prolonged confinement, without recreation, of a substantially criminal population could increase tensions.
- The number of INS detention officers at the SPC was about 25 percent below strength in April 1986. Additionally, because of recruiting restrictions, INS officials said that INS has been forced to hire detention officers who are unqualified or unsuited for the job.
- The private guard service which was used to supplement the INS guard force was cited repeatedly by INS for misbehavior, negligence, and possible collusion in detainee escapes and misconduct.
- Other security deficiencies were discussed with INS officials. These officials agreed that corrective action was needed but requested that the deficiencies not be disclosed due to the sensitivity of the subject matter.

In September 1986, a former BOP official under contract to INS made a comprehensive security survey at the SPC. As of October 14, 1986, his report had not been issued.

In 1983, 1984, and 1985, INS reported that a total of 1,365 criminal aliens were apprehended and processed for deportation by the New York District Office (NYDO). About two-thirds of these were deported directly from the SPC. The other one-third (474 aliens) were released on bond or on their own recognizance pending deportation hearings.

- An estimated 113 of the 474 aliens (24 percent) absconded during the release period.
- An estimated 166 of the 474 aliens (35 percent) were arrested; and an estimated 109 aliens (23 percent) were convicted during the release period, most for violent or drug-related crimes.

In July 1986, NYDO began to hold deportation hearings in state prisons, 6 years after initial plans to do so. This program can expedite the deportation process, relieve some of the burden on the SPC, and avoid problems associated with releasing criminal aliens on bond. However, program benefits are not fully realized because NYDO has not (1) established the alien status and deportability of all prisoner-aliens before they become eligible for parole, and (2) selected only appropriate criminal aliens for the expedited deportation process.

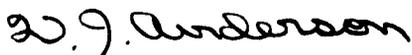
Continuing to house criminals, many of them violent, in facilities such as the SPC results in a potentially volatile situation. INS recognizes that a long-term detention solution is needed, particularly in view of the several thousand Mariel Cubans in, and expected to enter, INS custody. In June 1986, about 2,800 Mariels were in INS custody nationwide. In March 1986, about 2,500 more were serving prison sentences and will become INS' responsibility when released. INS believes that the solution to the problem will require a commitment of funds for secure housing.

INS is taking certain actions to resolve the security problems discussed in this report. In addition to these actions, we recommend that the Attorney General direct the Commissioner of INS to have NYDO

- follow BOP standards and not store any firearms and ammunition in the SPC; and
- ensure that it promptly investigates all foreign-born prisoners to determine their alien status and deportability, and selects appropriate alien prisoners for expedited deportation.

As requested by your office, we did not obtain official agency comments on this report. However, the report was discussed with INS officials, who generally agreed with its contents, and their comments were considered in preparing the final report. As arranged with your office, unless you publicly announce the contents of the report earlier, we plan no further distribution until 7 days from the date of the report. At that time, we will send copies to interested parties and make copies available to others upon request. Should you wish to discuss the information provided, please call Arnold P. Jones, Senior Associate Director, at (202) 275-8389.

Sincerely yours,



William J. Anderson
Assistant Comptroller General

C O N T E N T S

	<u>Page</u>
Background	7
Objectives, Scope, and Methodology	8
Security at the New York SPC is Inadequate to House a Criminal Population	9
The SPC houses a criminal population for which it was not intended	9
Disruptive activity continues at the SPC	12
Security weaknesses at the SPC	17
Mariel Cubans Exacerbate Detention Problems	27
Aliens Have Absconded and/or Committed Additional Crimes During the Deportation Process	29
Deportation process for criminal aliens released on bond is lengthy	31
Some criminal aliens absconded	32
Some criminal aliens committed crimes while released	32
NYDO Has Begun to Conduct Deportation Hearings in State Prisons	33
 Figures	
1.1 Rope Made of Bedsheets Used in Breakout from SPC	13
1.2 SPC Guard Force Gear Assembled in Preparation for Detainee Rioting	15
1.3 Mattresses in Which Detainees Hid Contraband	16
1.4 Chairs Destroyed by Detainees	16
1.5 SPC Dormitory	18
1.6 SPC Window Before Installation of Security Devices	20
1.7 SPC Window After Installation of Security Devices	20

1.8	SPC Control Post	22
Tables		
1.1	SPC Detainees With Criminal Backgrounds Crimes and Convictions April 29, 1986	11
1.2	Disposition of SPC Detainees With Criminal Records 1983-1985	30
1.3	Status of Criminal Aliens Released from SPC July 1, 1986	30

ABBREVIATIONS

BOP	Bureau of Prisons
DOD	Department of Defense
INS	Immigration and Naturalization Service
NYDO	New York District Office
OPM	Office of Personnel Management
SPC	Service Processing Center

BACKGROUND

Under the Immigration and Nationality Act, the Immigration and Naturalization Service (INS) can deport aliens (noncitizens) who have been convicted of crimes of moral turpitude, such as larceny, rape, and manslaughter, or other immoral or drug-related offenses. INS refers to those so convicted as deportable criminal aliens. Criminal aliens may be in the country legally or illegally.

INS can also deny entry to aliens on numerous grounds, including criminal activity. This process is called exclusion. At times, grounds for exclusion may be temporarily overlooked due to more pressing circumstances of the moment. For example, an excludable alien might be seeking asylum from political persecution. In such an instance, INS can parole (admit) the alien into the country, but if the individual subsequently engages in criminal activity, INS can revoke the alien's parole and commence exclusion proceedings.

Once aliens are apprehended and served with an order to show cause why they should not be deported, they are taken to the INS service processing center (SPC). They are held at the SPC pending release on bond or their own recognizance; excludables could be reparaoled (released). Those not released are detained until deported or their cases are otherwise resolved. The purpose of detention is not punishment but rather to ensure the alien's availability for hearings. The SPC is responsible for the secure detention of the alien and the alien's personal welfare, including food, clothing, emergency medical and dental care, and recreation. INS operates seven SPCs nationwide.

A deportable and excludable alien generally is entitled to a hearing before an immigration judge of the Executive Office for Immigration Review. Regardless of the outcome, the alien maintains the right to apply for relief from deportation or exclusion. If claims for relief are denied, the alien can appeal to the Board of Immigration Appeals. Further petitions for review can be made to federal courts.

The New York District Office (NYDO) is part of INS' Eastern Region and covers New York City and nine adjacent counties in New York State. NYDO's detention and deportation branch is responsible for detaining aliens in custody and processing them for deportation. As of May 31, 1986, the branch had 129 personnel on duty out of an authorized work force of 162. The on-duty personnel included 72 detention officers and supervisors, 25 deportation officers and supervisors, and 32 managerial and clerical positions. In 1983, 1984, and 1985, NYDO processed 1,365 criminal aliens for deportation. Of these, an estimated 975 were deported. The rest were released on bond or on their own recognizance pending deportation. As of July 1, 1986, they had not been deported.

OBJECTIVES, SCOPE, AND METHODOLOGY

By letter dated July 25, 1985, Senator D'Amato requested us to examine the effectiveness of the INS district office in New York in apprehending and deporting criminal aliens. In March 1986, we reported to Senator D'Amato on INS' activities in investigating and apprehending criminal aliens.² This report deals with the detention and deportation of criminal aliens after they have been apprehended. As agreed with the Senator's office, we examined

- the adequacy of security at the SPC in New York City,
- the results of bond and release procedures for deportable criminal aliens in terms of abscondee rates and crimes committed after release from INS custody,
- the feasibility of holding deportation hearings in state prisons for criminal aliens serving sentences there, and
- problems INS faces nationally in detaining Mariel Cubans who have been convicted of crimes but cannot be repatriated to Cuba.

In order to evaluate the security of the SPC, we held discussions with managerial and supervisory personnel at INS headquarters in Washington, D.C.; the Eastern Regional Office in Burlington, Vermont; NYDO; and Bureau of Prisons headquarters in Washington, D.C. We also examined policies, procedures, and records relating to detention, detainees, and guards; and observed the physical security and daily operations of the SPC.

To ascertain the results of bond and release procedures, we reviewed a random sample of 80 cases of 474 aliens designated by NYDO as criminals who arrived at the SPC between January 1, 1983, and December 31, 1985, and were subsequently released on bond or on their own recognizance. Projections from the sample are at the 95 percent confidence level with an error rate of plus or minus 10 percent.

To obtain information on the feasibility of holding deportation hearings in state prisons, we interviewed officials at INS headquarters, NYDO, the New York State Department of Correctional Services, the New York State Division of Parole, and the chief judge of the Executive Office for Immigration Review.

To obtain information on problems associated with detaining Mariel Cubans, we held discussions and reviewed appropriate documents at INS headquarters and visited SPCs which house Mariel

²GAO/GGD-86-58BR, March 10, 1986.

Cubans in El Centro, California; El Paso, Texas; Florence, Arizona; and Miami, Florida.

SECURITY AT THE NEW YORK
SPC IS INADEQUATE TO HOUSE
A CRIMINAL POPULATION

The New York SPC is a minimum-security facility designed to detain a noncriminal population for short periods. Instead it houses a growing population of aliens with criminal backgrounds who arrive from prisons and jails on a regular basis. Additionally, there has been a need to detain, for indefinite periods, a large number of aliens who arrived from Cuba during the Mariel Boatlift and went on to commit crimes.

The SPC's physical security and staffing are not designed for the problems caused by the unexpected need to house a predominantly criminal population. Although INS has recognized and attempted to deal with some of the security problems, efforts have been unsuccessful in curbing escapes, breakouts, and other criminal activity. The danger of this situation will worsen as more criminal aliens, including Mariel Cubans, are released from prisons and local jails into INS custody.

The SPC is located in Manhattan at 201 Varick Street, a 12-story reconverted loft-type structure which serves as a federal office building. The building is bordered by a public high school on the north and industrial and commercial buildings on the other sides. The immediate area of West Greenwich Village is a mix of industrial and commercial facilities, and four- to six-story walk-up apartments. In recent years, the area has become increasingly residential.

The SPC occupies the entire fourth floor of the building, about 70,000 square feet. It has capacity for 187 males and 38 females. The female area was closed on April 1, 1986, as a budget-cutting move, but it was scheduled to reopen in October 1986. In the interim, female detainees were being transported to and detained at other SPCs. Rooms used for deportation hearings are located on the sixth floor of the building. In fiscal year 1985, the SPC cost \$4.7 million to operate.

The SPC houses a criminal population
for which it was not intended

The New York SPC opened in April 1984, replacing the Brooklyn SPC, which had originally been used as a U.S. Navy brig.³ The rundown condition of the brig and its jail-like

³The facility, located within the New York Naval Station, is now used by the New York City Department of Correction to house short-term-sentence inmates. INS has a contract with the city to lease space at a cost of \$63 per detainee per day, minimum 20 detainees.

environment rendered it unsuitable for housing the generally noncriminal types of aliens then entering INS custody.

The SPC was designed in the late 1970s on the basis of two experience factors--that the aliens to be detained generally were not criminals, and that they would be detained for only a few days.

The average detained alien of the 1970s was a young male or female noncriminal who either overstayed his/her visa or entered illegally to secure employment. The INS estimated that, on average, aliens with criminal backgrounds would make up about 10 percent of the SPC's daily population and, largely, these would not be considered serious criminals. The SPC's environmental impact statement emphasized that the facility would not be used to detain aliens who had committed serious crimes. Instead, INS would avoid taking custody of such aliens by holding their deportation hearings at the penal institutions where they were serving their prison sentences. They would be deported directly from prison upon completing their sentences.

The environmental impact statement also indicated that the average length of detention between apprehension of an alien and departure was 6.5 days for males and 4.5 days for females. INS planned to transfer detainees who remained beyond the normal period of detention to the Federal Metropolitan Correctional Center, which had the facilities to provide for longer term needs.

INS designed the SPC to meet the security requirements of a Federal Bureau of Prisons (BOP) level 2 facility. BOP, which operates most federal prisons, categorizes its institutions in six security levels, depending on the type of inmates being housed. Inmates who present the least security risk are placed in minimum security facilities (levels 1 and 2). Offenders who by their behavior have identified themselves as violent, serious escape risks, or seriously disruptive to the orderly running of an institution, are placed in maximum security facilities (levels 5 and 6).

The actual population of the SPC has been significantly different from that for which it was originally designed. In 1980, 10 percent of the detainees at the now-closed Brooklyn SPC had criminal backgrounds. As of April 29, 1986, two-thirds of the detainees at the SPC had criminal backgrounds, many with violent felony offenses. Additionally, the average length of detention has far exceeded the estimated stay of a few days. The increased level of criminal aliens requiring INS detention is expected to continue.

Of the 168 detainees being housed as of April 29, 1986, 113 (67 percent) had criminal backgrounds. This includes 55 Mariel Cubans. Our review of available INS files for 96 of the 113 showed that they accumulated 325 convictions, as follows:

Table 1.1
SPC Detainees With Criminal Backgrounds
Crimes and Convictions
April 29, 1986

<u>Type of crime</u>	<u>Number of convictions</u>
Violent crimes:	
Manslaughter	1
Rape and attempted rape	4
Sexual abuse and sodomy	5
Other violent crimes	<u>72^a</u>
Total	82
Drug-related crimes	102
Other crimes	118 ^b
Minor crimes	<u>23^c</u>
Total convictions	<u>325</u>

^aIncludes robbery, assault, possession and use of a weapon, and unlawful imprisonment.

^bIncludes burglary, theft, larceny, criminal mischief, trespassing, and gambling.

^cIncludes resisting arrest, disorderly conduct, and drunk driving.

Although INS expected the average detainee would stay no more than 7 days, about 83 percent of the total SPC population as of April 29, 1986, had been housed for 8 or more days. Eighty-three criminal aliens, including 50 Mariel Cubans, had been held for a month or more; and 30, including 20 Mariels, had been held for periods ranging from 6 months to over 1 year.

The increase in the population of criminal aliens at the SPC is the result of two factors--the Mariel boatlift of Cuban emigres in 1980, and INS' implementation of a case management system which has brought increased numbers of criminal aliens into custody from New York State prisons. Consequently, increasing numbers of criminal aliens must be detained by INS.

The number of Mariel Cubans detained at the SPC increased from 5 in early 1985 to 73 in July 1986. After arriving in the United States, many of the Mariels were convicted of crimes and placed in INS custody upon their release from prison. Since they cannot be deported due to the absence of a repatriation agreement

with Cuba, INS must detain them indefinitely. (The national impact of the Mariel Cuban problem is discussed in a later section of this report.)

INS' investigative case management system, which prioritizes the various types of INS investigations, went into effect in October 1983. Its principal approach to criminal aliens was to target those already convicted and incarcerated in prisons. Through use of the system, INS increased the number of criminal aliens apprehended and delivered to the SPC. NYDO apprehended 373 criminal aliens in 1983, 446 in 1984, and 546 in 1985, the vast majority from state and local jails. In the first 4 months of 1986, 144 criminal aliens were released to INS custody from New York State prisons.

Disruptive activity continues at the SPC

Although the criminal aliens detained at the SPC have completed their prison sentences and are no longer subject to confinement as criminals, some have continued to exhibit disruptive behavior, often violent, while in the SPC, including escapes and attempted escapes, riots, assaults, and smuggling of contraband. These incidents pose serious security problems for noncriminal detainees, guards, and the general public.

Breakouts and escapes

From the opening of the SPC in April 1984 to August 2, 1986, there were five breakouts from the facility and eight escapes from escort details at hospitals and other locations. The breakouts and escapes involved a total of 31 detainees, including 2 who escaped twice. Twenty-three were at large as of August 2, 1986 (including 6 who escaped on that date), and 20 of these have criminal backgrounds.

In the five breakouts from the SPC, 24 detainees escaped (including 1 who escaped twice) and 8 were recaptured. One of those recaptured later reescaped from a hospital where he was being treated for injuries sustained in an earlier escape.

The circumstances of the breakouts and the manner in which they were carried out were similar. The breakouts all occurred in the early evening or at night, three from the same dormitory area. The detainees used makeshift tools to force open the SPC's window screens to gain access to the windows. There were no security bars or barriers of any sort to prevent or deter escapes. Once the screen was forced open, detainees pried the window open or broke the glass. They then used makeshift ropes of bedsheets tied together to descend, hand-over-hand, to the street, four stories below. The breakouts appear to have been well-planned and coordinated. Detainees used diversionary maneuvers to distract the attention of guards, such as staging an altercation, setting a trash fire in a garbage can, and engaging guards in conversation.



Figure 1.1: Rope Made of Bedsheets Used in Breakout from SPC. Source: GAO

Eight escapes occurred during escort details outside the SPC. Two escapees were recaptured. Six of the eight detainees escaped from hospitals to which they had been taken for inpatient care due to injuries sustained during escape attempts or other medical problems. The escapes were carried out by detainees watched by guards under contract to INS. In several of these escapes, INS suspected gross negligence or possible collusion on the part of the guards. (The overall performance of the contract guards, as discussed later in this report, has been a source of continuing dissatisfaction to INS.) For example, in April 1986, two detainees escaped a few hours apart from a hospital. One of them was in a total body cast, having fractured his spine during an earlier escape attempt and was virtually unable to stand, sit, or lie down without help. In the escape, the guard on duty left his post in the hospital room to go to a restroom across the hall. The mother of the detainee was in the room visiting. When the guard returned to the room minutes later, the detainee was gone.

In the second escape, the guard accompanied the detainee to a restroom in the hallway but remained outside. After several minutes, the guard checked the restroom and found the detainee had disappeared. There were no windows or other exits in the restroom. This detainee, a Mariel Cuban, had an extensive criminal background that included 13 arrests in a 3-1/2-year

period, with convictions for drug distribution and possession of stolen property.

At least 25 of the 31 escaped detainees had criminal backgrounds; 3 had no criminal backgrounds. In three cases records were not adequate to establish whether the detainees had criminal backgrounds.

Of the 23 detainees at large, 19 (including 16 Mariels) have been convicted at least once; 1 had an arrest record, but no convictions. The 19 convicted detainees at large have a total of 60 convictions in the United States for the following: attempted murder (1); manslaughter (1); assault (4); attempted rape (1); burglary/attempted burglary (7); robbery (5); theft (1); petit theft (1); grand larceny (3); petit larceny (7); possession or distribution of a controlled substance (3); criminal sale/possession of marihuana (3); receiving or possession of stolen property (5); criminal trespass (3); criminal possession of a weapon (4); unlawful possession of a weapon (4); criminal mischief (1); gambling (1); jostling (2); disorderly conduct (2); unauthorized use of vehicle (1). Since available documentation was not complete in each of the escapee files reviewed, the actual number of criminal convictions may be understated. One of the detainees at large is a fugitive on a murder charge, the offense having occurred after his escape from the SPC.

In addition to actual escapes, between April 1984 and June 30, 1986, there were 15 attempted or suspected attempted escapes in which detainees were either caught in the act of escaping, were observed attempting to do so by other detainees, or suspicious activities were observed indicating that a possible breakout was planned. Criminal aliens were involved in at least six of these incidents. The incidents included attempts to solicit aid from guards through bribes; tampered or broken security screens, either torn, punctured, or pried loose from their frames; discovery of makeshift tools, such as broken metal pieces from door hinges, table bases, and towel rack rods; and makeshift ropes of bedsheets tied together. In one escape attempt, for example, a Mariel Cuban succeeded in obtaining a long heavy-duty screwdriver which she used to force open a window screen, causing damage to its locking mechanism. She also offered to pay an INS guard \$3,000 to procure a window key for her.

Disturbances and other incidents

Several riots and near-riots have occurred at the SPC. For example in July 1986, INS learned that several Mariel Cubans planned to set fire to the SPC and destroy the facility as part of an escape attempt. The disturbance was apparently planned to take place over the July 4th weekend while the President and other dignitaries were attending the Statue of Liberty centennial celebration. Because outbreaks of destructive violence by Mariel Cubans had already occurred at three other SPCs, INS took action to protect its facility, personnel, and other detainees. On July

2, 15 Mariel Cuban detainees, identified as ringleaders, were transferred to a county jail in Minnesota at a cost of about \$6,000. The jail would not keep the detainees for longer than 1 week. INS also deployed a Border Patrol tactical team at the SPC over the July 4th weekend to deal with the elevated tensions and possible trouble there. However, there was no violence or escape attempts.

A similar situation arose in August 1986 when NYDO received information that a riot would take place at the SPC. NYDO assigned 51 investigators and deportation officers to the SPC and again called in a Border Patrol tactical team. Because of increased tensions, NYDO reassigned four deportation officers to the SPC on a daily basis for at least 1 month.



Figure 1.2: SPC Guard Force Gear Assembled in Preparation for Detainee Rioting.
Source: GAO

Numerous disruptive incidents have occurred at the SPC. These include physical abuse, harassment, and assaults against other detainees and guards; smuggling of drugs and detection of other contraband, such as razor blades, knives, and makeshift weapons; and vandalizing of the SPC's video monitoring equipment and furniture. The SPC's monthly reports disclosed that about 100 such incidents occurred during the 16-month period ending April 30, 1986. However, this figure is understated because, according to an SPC representative, at least 100 other incidents occurred during the same 16-month period that were not reported because they were not considered important enough.

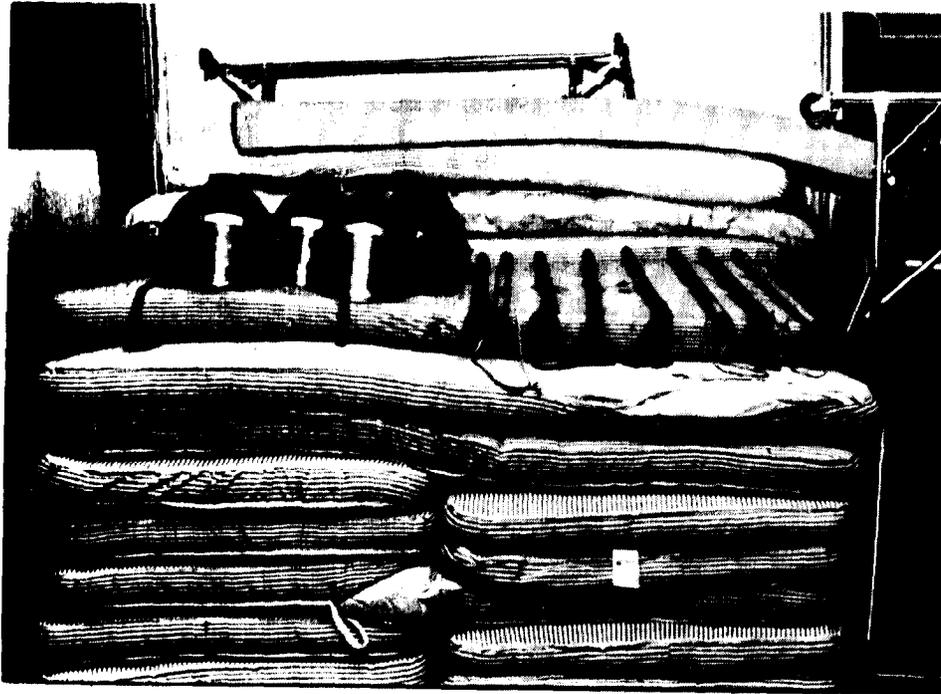


Figure 1.3: Mattresses in Which Detainees Hid Contraband. Source: GAO

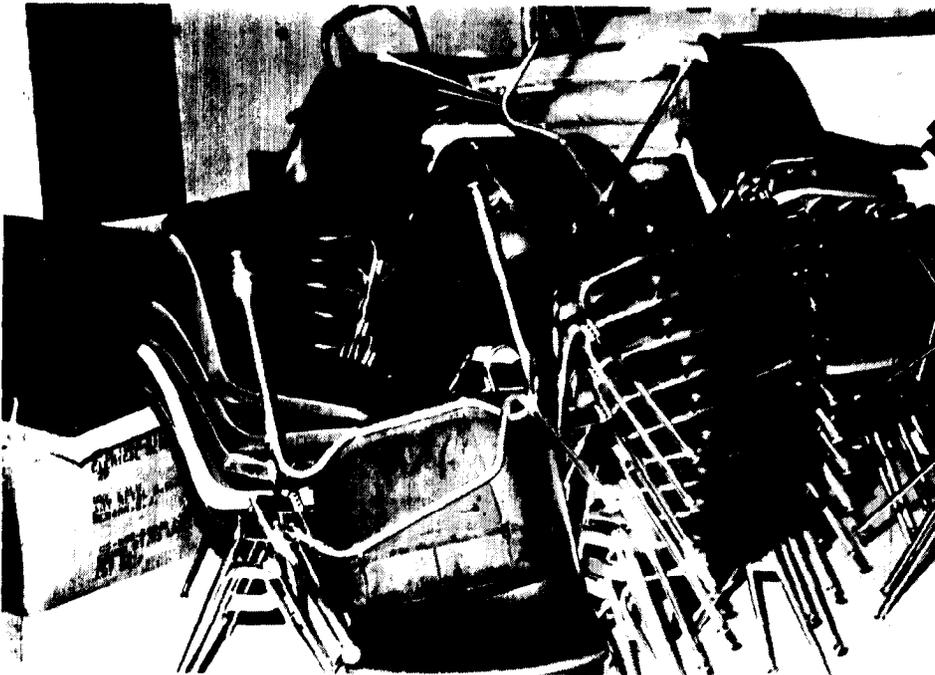


Figure 1.4: Chairs Destroyed by Detainees. Metal connecting piece between chair legs has been removed on many of these for possible use as a weapon or for prying open window screens. Source: GAO.

Shakedowns of detainees have uncovered contraband, such as marijuana, cocaine, pills, and weapons such as pocket knives and razor blades. During the 16-month period ending April 30, 1986, SPC reports showed that of a total of 52 shakedowns, 44 uncovered contraband, including 31 shakedowns which turned up drugs or drug paraphernalia.

A series of drug-related incidents provides some indication of blatant drug use at the SPC. In one incident, INS guards found 40 marijuana joints and a bag of marijuana, along with drug-related paraphernalia, such as rolling paper and paper clippers, hidden under a commode in a toilet area. In another incident, a guard observed a detainee smoking what appeared and smelled like marijuana. The detainee swallowed the cigarette before the guard could remove it. The guard then searched the detainee and his property and found 31 marijuana joints and a small plastic container of the drug. In addition, SPC reports have noted open drug use by female detainees believed to have stored drugs in body cavities. Allegedly, the females smoked marijuana at will in the bathroom; other detainees were aware of this practice, and it was done with the knowledge of the female guard staff. Detainees who reported this to the guards were reportedly threatened by the detainees who were using the drugs.

Security weaknesses at the SPC

Because the SPC houses a predominantly criminal population for which it was neither intended nor designed, serious security weaknesses exist in its physical layout, equipment, and operational practices. INS has recognized security problems and has taken or planned corrective action in some instances. However, the persistence of breakouts, disturbances, and criminal activity indicates that the SPC has not been brought up to the level of security appropriate to the population it houses. The deficiencies not only facilitate the possibility of escapes but detract from an orderly and safe environment within the SPC.

In September 1986, a former BOP official under contract to INS made a comprehensive security survey at the SPC. As of October 14, 1986, his report had not been issued.

Co-housing of criminal aliens and noncriminal aliens

The SPC houses aliens in a dormitory-style arrangement whereby criminal aliens, often violent and with lengthy prison records, are mixed with aliens who do not have criminal backgrounds. Under such circumstances, noncriminal aliens are exposed to the risk of abuse, harassment, assault, or injury by those aliens with criminal backgrounds.

The male detainee areas consist of four large barracks-type dormitories. Each dormitory contains 45 to 50 beds arranged in rows, a recreation area, and toilet facilities. There are no individual rooms or partitions of any sort to physically separate

detainees in the dormitory areas. Arriving detainees are assigned to vacant beds in any of the four dormitories. As of April 29, 1986, for example, one dormitory housed 11 noncriminals and 31 criminals, including 17 Mariel Cubans. Another housed 16 noncriminals and 22 criminals, including 11 Mariel Cubans.

The SPC has taken some temporary measures to separate detainees. After a May 1986 breakout, the SPC reassigned all Mariel Cuban detainees to two dormitories and removed those detainees already there. This was done in an effort to deter any further breakouts. At the time, the installation of window security devices was not yet complete, and INS wanted to place those detainees whom it considered the most escape-prone in an area where the window barriers were already in place. Because this worked well, SPC representatives have continued to separate all Mariels and some non-Mariel criminal aliens in two dormitories. An NYDO official told us this would continue as long as possible. However, some criminal aliens considered to be less dangerous are still intermingled with noncriminal aliens.



Figure 1.5: SPC Dormitory. Source: GAO

Inadequate segregation facilities
for troublesome detainees

To maintain discipline and protect other detainees, INS segregates, when necessary, an identified troublemaker after an incident or shakedown. Six maximum segregation cells are available for this purpose. Minimum segregation areas are also available. These are two family rooms originally designed to be used if family members were in custody at the same time. During the 5-month period ending May 31, 1986, 120 detainees were segregated for such reasons as fighting with other detainees,

disobeying or threatening guards, vandalizing equipment, and possession of drugs.

The family rooms are often used to segregate problem detainees. (INS policy generally prohibits keeping detainees in maximum security cells for more than 72 hours. The family rooms may be used to segregate detainees for lengthier periods.) Although the family rooms are behind locked doors, they are located outside the gates which border the detention area of the SPC. If a detainee were able to leave the family room, he would have access to the SPC's administrative offices. These family rooms have been used to hold detainees who have exhibited violent and disruptive behavior. For example, one of the detainees held there was a violent Mariel Cuban who had escaped from the SPC twice.

Windows ineffective in preventing breakouts

Detainees escaped through the SPC's windows in the five breakouts which occurred between June 1985 and August 1986. The vulnerability of the SPC's windows has repeatedly been cited by NYDO and the Eastern Region as the primary factor in the breakouts. Nevertheless, in the nearly 1-year period from the time the problem was recognized to the time corrections were made, three breakouts occurred. After work was completed, INS observed a number of deficiencies in the contractor's work and has held up final payment.

Each window in the SPC has an interior screen. The screens were the only equipment blocking access to the windows but were easy to open. They were fastened by locking pins located in the screen frame. According to an Eastern Region representative, detainees realized that they could use makeshift devices to unlock the screen so it would swing open permitting access to the window. There were no security devices of any sort, such as bars or wire mesh installed on the windows--they could simply be opened or broken. Also, in some instances, detainees had torn the screening.

After the first breakout in June 1985, the Eastern Region recommended the installation of security devices on the windows and urged that this be given top priority. INS also asked a BOP representative to examine window security. In September 1985, a breakout occurred and four detainees escaped. The BOP representative recommended installing horizontal crossbars over the screens to prevent the frames from being pried loose. The Eastern Region decided that the recommendation would not be feasible and instead devised a window-security plan of its own which called for installation of (1) a steel-mesh security grid between the windows and the screens, and (2) plates to fully wrap around and seal off the screen frames to preclude access to the key wells of the screens. The work was to be done under contract and covered 78 windows at a cost of about \$69,000.

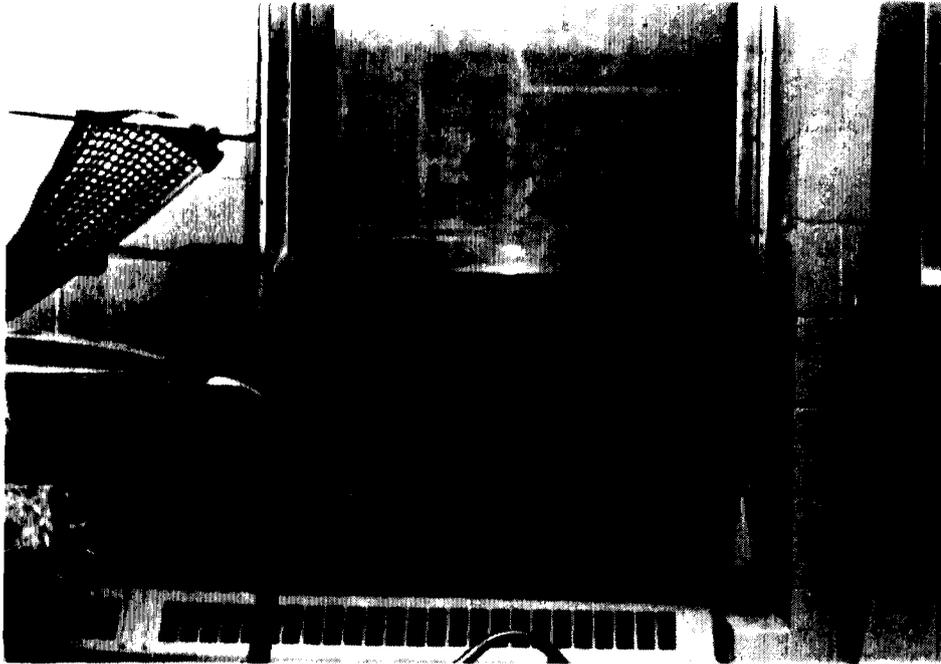


Figure 1.6: SPC Window Before Installation of Security Devices. Source: GAO

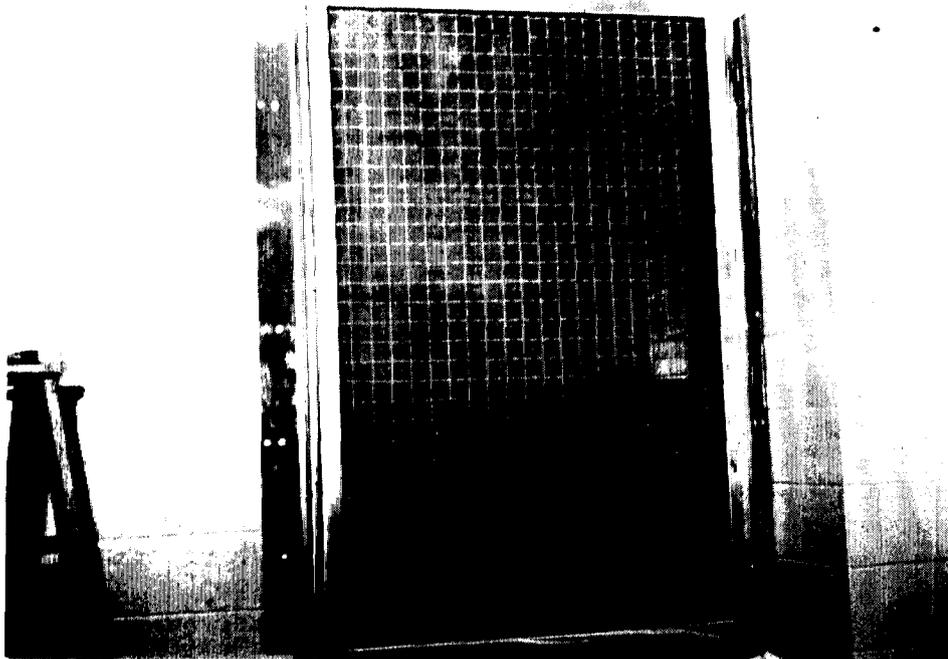


Figure 1.7: SPC Window After Installation of Security Devices. Source: GAO

On December 8, 1985, just before bid solicitation, a breakout occurred involving eight detainees. As a temporary measure, on December 13, INS had the screens on the windows used in previous breakouts welded shut. In the spring of 1986, the contractor commenced work on the windows. On May 27, 1986, another breakout occurred, involving five detainees. The work on the window used in this escape had not yet started.

In June 1986, an Eastern Region representative inspected the contractor's work and found several deficiencies which could undermine security. As of August 1986, the Eastern Region was withholding final payment until the required corrections were made.

Inadequate security of the control post

The security of the control post, which functions as the SPC's operations and communications center, is essential because it controls and monitors nearly every important daily activity. Among its key functions, the control post:

- controls electronically-operated power gates in the main detainee entrance/exit area and the freight elevator used to transport detainees to hearings on the sixth floor of the building,
- monitors all radio communications among the guard force,
- channels all incoming telephone communications,
- maintains security of all weapons entering the facility and controls access to an adjacent storage room used as the SPC's arsenal, and
- monitors all sensing devices and alarms.

The control post is situated at the junction of three corridors that converge on the SPC's main detainee entrance/exit area. The corridors connect the control post with the male and female processing areas; the infirmary, dining area, family rooms, and video monitoring control room; and the detainee library and dormitory areas. Only the first two of these three approaches are equipped with gates; thus, the post is not entirely protected or sealed off from the detainee areas. Detainees are able to see into the control post and observe its layout, location of equipment, daily activities and routines of staff, and the number of guards on duty.

The control post itself consists of two adjoining rooms--a communications and operations center and an ammunition and firearms storage area. The post is constructed of hollow concrete masonry blocks. Along two exposures is a wrap-around, heavy-duty polycarbonate plastic window about 3/8 of an inch thick. The window is believed to be impact-resistant, but it is not bullet-proof. According to a BOP representative, the

construction materials used in the control post are inadequate from a security standpoint--the concrete blocks should be steel-reinforced; and the window, which can be broken through, should be protected by steel bars.

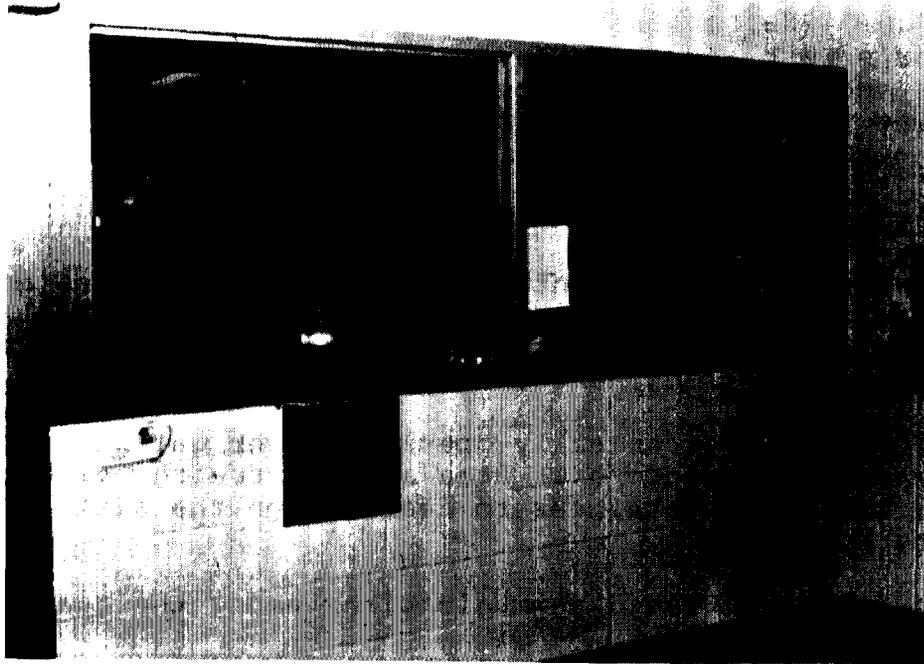


Figure 1.8: SPC Control Post.
Source: GAO

NYDO representatives informed us that they have been aware of control post deficiencies since the SPC first opened. An SPC representative stated that she saw little justification for not having a gate in the library corridor, and she had raised the issue in the past. An NYDO official also told us that an additional security gate was needed adjacent to the control post to provide adequate protection against a possible attack or other disruptions by detainees. Additionally, he expressed concern about the capability of the window to withstand violent impact. An Eastern Region representative agreed that the absence of a gate in the library corridor could pose a problem. These and several other issues are being addressed in a series of security improvement recommendations that were to be forwarded to the Eastern Region.

Firearms and ammunition
inappropriately stored in the SPC

Firearms and ammunition for use by guards were stored in a locked room adjacent to the control post in a combination-lock

vault. (During our review, we saw that the combination was posted on the vault but it was subsequently removed.) The firearms included twelve 357 magnums and four 38-caliber pistols plus 95 rounds of ammunition. Additionally, about 67,000 rounds of lethal ammunition used for training purposes were stored in a locked room within the female baggage area. We observed numerous instances in which unattended female detainees used the baggage area for changing their clothes while guards stood outside.

After discussions with INS officials, we were informed that the weapons and ammunition were relocated to a safer area. However, a few weapons and some ammunition were still being maintained within the SPC for detention officers to use on official details which require firearms. Although the weapons and ammunition are in a locked space and INS has reduced their quantities, their presence within the detention facility proper is contrary to both INS and BOP security standards. INS policy is that firearms should be stored in administrative areas rather than in detention areas. According to a BOP representative, BOP standards are more stringent and prohibit the storage of weapons or ammunition on the premises of a facility which houses violent felony offenders.

Lack of outdoor recreational facilities

The SPC's recreational facilities include a weight room, a small library, magazines, newspapers, television, ping-pong, and some board games. However, since the SPC was not designed for long-term detention, no provision was made for permanent outdoor forms of recreation. As a result, many detainees have gone for extended periods without any outdoor exercise. An April 1985 report by a committee of the New York City Bar Association cited the lack of recreational and educational facilities and noted that detainees face "excruciating boredom."

Detainees are provided with limited outdoor exercise. During the warm weather months, the SPC conducts twice-weekly trips to Rikers Island (a New York City Department of Correction facility) for outdoor recreation. The trips are made, weather permitting, between spring and fall and average about 20 detainees per trip.

INS has recognized that a comprehensive indoor and outdoor recreation program might result in fewer altercations and incidents. INS also plans to build an outdoor exercise area on the roof of the SPC at a cost of \$135,000. The estimated completion date for construction is November 1987.

Inadequacies in the SPC guard force

The SPC guard force consists of INS detention officers supplemented by guards from a contract guard service. NYDO has experienced problems in obtaining sufficient numbers of detention officers, and recruiting difficulties have sometimes resulted in

NYDO not being able to obtain the caliber of detention officer best qualified for the job.

According to INS records, both the detention officers and the contract guards have exhibited questionable performance in carrying out their duties. The contract guards, whose contract expired on September 20, 1986, were consistently cited by NYDO for poor service and misconduct, including suspected collusion in detainee escapes and other misconduct. For fiscal year 1987, INS awarded a contract for guard service to another firm.

Detention officers

The number of detention officers on duty has generally been below what NYDO has been authorized, largely due to staff turnover and difficulties in finding qualified personnel to fill vacancies. The problem became serious in February 1986 when the Balanced Budget and Emergency Deficit Control Act of 1985 forced INS to impose a hiring freeze. In May 1985, 91 guard positions were authorized and 84 guards were on duty. By April 1986, 95 positions were authorized and 70 guards were on duty. This decline has occurred at a time when the SPC's security problems have increased because of the large number of criminal aliens being housed there. An INS representative told us that it has attempted to hire more detention officers, but the Office of Management and Budget has required INS to use contract guards rather than detention officers.

Since the hiring freeze, the SPC has had to place detention officers on longer shifts, causing increases in overtime costs. Additionally, higher salaried deportation officers at NYDO have been assigned to the SPC for work normally done by lower salaried detention officers. This resulted in deportation cases being reassigned for processing to other deportation officers who were then burdened with increased workloads.

INS has cited hindrances in recruiting qualified and well-suited personnel for detention officer positions. In July 1985, a headquarters memo noted "Quite frankly, the choice usually boils down to the selection of an individual with either a criminal record, or an employment history indicative of poor work quality." One limiting factor cited by INS is that in filling detention officer positions, federal regulations have certain restrictions as to who is eligible. According to INS, OPM's standards for the position do not allow for any educational substitution for job experience. Thus, a college graduate with a police science major could not qualify for a position. An INS official told us that to remedy this situation, INS developed a "detention enforcement officer" position description which the Office of Personnel Management (OPM) approved in September 1986.

INS had not taken steps to ensure that candidates for detention officer positions have been properly screened. The normal screening of applicants is handled by OPM and consists of a routine background investigation. However, upon an agency's

request, OPM also conducts more detailed screenings of applicants when the position in question may involve the use of firearms. Such screening would involve, for example, inquiries into the applicant's ability to work under stress, stability of character, use of judgement and discretion, behavior in emergency situations, financial responsibility, and physical health. INS has never requested special screenings of its applicants because, according to an Eastern Region representative, the agency was unaware that such screening was available. This representative said that he would request such screenings in the future.

SPC detention officers have been cited for misconduct, inattentiveness to professional duties, and various other infractions of discipline and deportment. SPC reports have noted such instances as physical and sexual harassment of detainees, excessive and unauthorized leave, falling asleep on the job, unauthorized possession of firearms, fighting with other guards, and failure to report to work. For example, from January 1985 thru April 1986, there were 15 indefinite suspensions or terminations of 13 detention officers and 2 temporary guards. Our review of files for 10 of these disclosed infractions involving submission of false or forged medical excuses for unauthorized absences, noncompliance with instructions, and insubordination.

In an incident of detainee misconduct, NYDO expressed concern about the lack of vigilance and inattentiveness to duty of the detention officers. A detainee broke off a piece of metal from a table base and punctured a hole in a window screen. The Eastern Region's report of the incident stated:

"It is unbelievable that a damaged screen and broken table could go unobserved for more than 8 hours and through two changes in shift. The fact that the officers were permanent employees and had several years of experience render the dereliction of duty even more unacceptable."

Contract guards

The contract guard service employed at the SPC until September 20, 1986, consistently posed problems in maintaining an appropriate level of security and professionalism. The guard services for fiscal years 1986 and 1987 were selected under the Small Business Administration's section 8(a) set-aside program. This program is aimed at making business opportunities available to small firms owned and controlled by individuals from economically and socially disadvantaged groups. Section 8(a) authorizes the Small Business Administration to enter into contracts with other agencies and to let subcontracts to firms eligible for program participation. Eligible firms are allowed to obtain contracts without competitive bidding against larger, more established firms. Under federal regulations, INS is limited to using those guard service contractors that are in the program. According to the Small Business Administration, the

contractor for fiscal year 1987 is the only firm in the New York area that could meet INS requirements.

The contract guards did not receive any basic training in detention duties, specifically security or correction matters. Under the terms of its contract, the contractor was required to provide each guard 39 hours of basic training prior to placing the guard on duty, and 1 hour of refresher training each succeeding month, but this did not include any courses in detention duties. In a report issued after the June 1985 breakout, an SPC representative warned that even though the guards lacked basic training, they were still expected to function as detention officers in a facility with an increasing number of detainees with violent criminal backgrounds. The report called this situation "highly dangerous and volatile."

NYDO repeatedly pointed out the poor caliber of service provided by the guards in terms of lack of vigilance, gross negligence to duty, gross misconduct, and suspected collusion in detainee escapes. In March 1986, for example, an NYDO report stated "Time and again [the contractor's] employees have displayed an inability or unwillingness to perform their duties in such a manner that will meet even minimal standards." Problems cited by NYDO included guards falling asleep on duty; walking away from duty posts on hospital details, leaving detainees unguarded and able to escape; allegedly participating in drug trafficking and smuggling of other contraband into the SPC; propositioning detainees for money or jewelry to assist in escapes; reporting for work under the influence of alcohol; and failing to aid INS detention officers to halt detainees from escaping. In April 1986, for example, following two escapes from a hospital on the same day by two detainees, one of whom was in a body cast, NYDO reported to the Eastern Region "It is inconceivable that these escapes could have occurred without the assistance, acquiescence, or unbelievable negligence of the [contractor] employees on duty."

In May 1985, a guard was allegedly bringing cocaine and large amounts of marijuana in cigarette packs into the SPC, selling them to and storing them for detainees. In another incident in September 1985, a detention officer observed on the television monitor what appeared to be a drug transaction between a contract guard and a detainee. The detention officer observed money being exchanged. He searched the detainee and found a marijuana cigarette, a suspected amphetamine pill, and two razor blades. NYDO had the guard removed from duty at the SPC.

The guards were also involved in alleged solicitations of money from detainees to assist in escapes. In an incident involving an escape from a hospital in October 1985, a detainee alleged that a guard offered to allow him to escape in exchange for money. The detainee said that he paid this guard and another guard \$500. According to the detainee, the two guards allowed him to escape from the hospital; however, at the last minute, one of the guards apparently changed his mind, chased the detainee,

and caught him nearby. One of the guards involved in this scheme had previously been a temporary INS detention officer at the SPC, but he was terminated when it was discovered that he had previous trouble with the law. Despite this, the guard service later hired this guard, sent him to the SPC, and later placed him on hospital details to guard detainees without informing NYDO. When NYDO discovered this, the contractor was directed to remove the guard. At one point, NYDO had considered removing the guard service from the SPC and operating entirely with INS detention officers but staff shortages precluded this. However, NYDO has required the contractor to remove and replace more than 50 guards from duty posts at the SPC.

On several occasions, NYDO attempted to terminate the contract but, in its view, was unable to do so because of insufficient legal grounds for breach of contract or default action. The contract, under which INS paid out about \$1.25 million in fiscal year 1985, expired September 20, 1986. As noted earlier, a new guard contractor was hired for fiscal year 1987.

Other security matters

INS agreed with other security deficiencies we noted and that corrective action was needed; however, INS requested that these deficiencies not be disclosed due to the sensitivity of the subject matter.

MARIEL CUBANS EXACERBATE DETENTION PROBLEMS

The Mariel Cuban problem directly affects the New York SPC, but it also has national implications. The need for INS to detain large numbers of violent Cuban criminals has severely disrupted detention activities and strained detention resources.

During 1980, 125,000 Cubans permitted to emigrate by the Cuban government arrived in Florida as exiles in a refugee boatlift that originated from the Cuban fishing port of Mariel. The majority were paroled (admitted) into the United States under emergency conditions and adjusted to American society as law-abiding citizens. However, about 1,800 were identified as dangerous criminals or mentally incompetent people, ruled excludable, and placed in detention. Later about 1,400 were either paroled into the United States or repatriated to Cuba.

More than 5,000 other Mariel Cubans admitted into the United States have since been convicted of criminal offenses. INS has revoked their parole, thus making them subject to deportation as excludable aliens. Upon completion of their sentences, they are turned over to INS. However, they cannot be deported because the Cuban government has refused to take them back. This impasse between the United States and Cuba appeared to have been resolved in December 1984 with the negotiation of a repatriation accord under which Cuba began to take back some of the detainees. But

in May 1985, Cuba abruptly suspended the 5-month-old agreement. As of June 23, 1986, the following numbers of Mariel Cubans were being detained:

- 328 in five SPCs;
- 481 in 49 facilities under contract to INS, such as local jails;
- 1,855 in a BOP-operated maximum security prison in Atlanta;
- 151 in a psychiatric hospital; and
- 39 in five federal correctional institutions.

As of March 1986, another 2,567 Mariels were serving sentences in federal, state, and local penal institutions and will become INS' responsibility when released from those institutions.

INS faces severe detention problems on several fronts. INS is unable to deport the Mariel detainees and is unwilling to reparole (release) many of the Mariels in its custody because it believes that they represent a threat to society. Other Mariel detainees who have finished serving their state or federal prison sentences are being released into INS custody at a rate of 80-100 per month. And, more Mariels are being arrested and convicted, adding to the rolls of potential INS detainees. As a result, INS has been unable to gauge the ultimate size of the problem.

The problem has been further complicated by lack of resources to relieve the burden on INS facilities. INS has been unable to transfer the Mariel detainees to other facilities to make room for those who continue to arrive as they are released from prisons. Until mid-1985, the SPCs had been able to transfer Mariels to the Atlanta penitentiary. However, this prison reached peak capacity at that time and cannot accept any additional detainees. NYDO has had difficulty obtaining additional and economical detention space for its growing number of arriving Mariels. Many local jails from which INS might lease available space either have refused or have been reluctant to accept the Mariel detainees because of their disruptive and often violent behavior. Moreover, space at these facilities is costly. INS estimates the cost of housing Mariel Cubans in leased facilities in fiscal year 1986 at \$7.8 million.

Space problems have been compounded by security problems. Three of the four SPCs in which Mariels are being detained are, like the New York SPC, minimum security facilities. (The fourth is also a minimum security facility, but Mariels are housed in a higher security building.) The Mariels have continued their disruptive behavior while in detention as evidenced by escapes, riots, and extensive damage.

INS has considered several options to deal with the detention of Mariel Cubans, as follows:

- continue the present course of placing Mariels in SPCs;
- utilize existing Department of Defense (DOD) confinement facilities; and
- seek additional funding to lease space in non-INS facilities, and eventually establish a prison-like detention facility.

According to INS, continuing to place Mariels in SPCs has several drawbacks. It would disrupt INS' apprehension efforts against other aliens, such as those illegally crossing the borders, by absorbing detention space. It also subjects passive detainees to exploitation or injury and exposes INS to litigation for failure to protect them. INS believes that utilization of the facility offered by DOD (Portsmouth, New Hampshire, Naval Base) would not be feasible because of the facility's age, other environmental problems, and the cost and time needed to make renovations.

INS chose to act on the third option. Short-term funding of \$7.8 million was requested for fiscal year 1986 to lease space in contract facilities. A supplemental appropriation of \$3 million was approved. However, INS also envisions the need for long-term funding to establish a detention facility for the Mariel Cubans similar to the Atlanta penitentiary. INS is continuing to seek the cooperation of DOD and other federal agencies in obtaining a facility.

ALIENS HAVE ABSCONDED AND/OR
COMMITTED ADDITIONAL CRIMES
DURING THE DEPORTATION PROCESS

Between the time aliens are apprehended and the time they are deported, they are either detained at the SPC or are released on bond or on their own recognizance. Almost two-thirds of the 1,365 criminal aliens whom NYDO apprehended during the 3-year period ending December 31, 1985, were deported directly from the SPC, most of them within 90 days. However, the process for the one-third of the criminal aliens who were released was generally lengthier. About 24 percent, or 113 of those released, absconded. Additionally, about 35 percent, or 166 of the released aliens, were arrested for crimes after release.

In 1983, 1984, and 1985, NYDO apprehended and processed for deportation 1,365 aliens whom SPC records designated as criminals. They were released or deported as follows:

Table 1.2
Disposition of SPC Detainees
With Criminal Records
1983-1985

<u>Disposition</u>	<u>Number</u>	<u>Percent</u>
Released on:		
Bond	441	32.3
Recognizance	33	2.4
Total	<u>474</u>	<u>34.7</u>
Deported from SPC	891	65.3
Total	<u>1,365^a</u>	<u>100.0</u>

^aAlthough 2,015 criminal aliens arrived at the SPC during this period, we excluded 650 of them from our universe because they had been apprehended and processed for deportation by INS district offices other than NYDO; had been transferred out of NYDO custody to other detention facilities or criminal justice agencies; escaped; or were still being detained on April 25, 1986.

We reviewed a random sample of 80 of the 474 aliens designated as criminals released from the SPC. The following illustrates their status as of July 1, 1986, along with projections to the total universe.

Table 1.3
Status of Criminal Aliens
Released from SPC
July 1, 1986

<u>Status</u>	<u>Number</u>		<u>Percentage</u>
	<u>Sample</u>	<u>Universe</u>	
Deported/voluntarily departed	14 ^a	83	17.5
Absconded	19	113	23.8
Relief from deportation granted	2	12	2.5
Other case terminations	4	24	5.0
Cases in process	33	195	41.1
Unable to verify criminal background	<u>8</u>	<u>47</u>	<u>10.0</u>
Total	<u>80</u>	<u>474</u>	<u>99.9^b</u>

^aIn six of the sampled cases, the alien was allowed to depart voluntarily. The law prohibits INS from granting voluntary departure to criminal aliens. However, an immigration judge can allow this. In most of these cases, the alien was in the United States illegally.

^bDoes not add to 100 percent due to rounding.

Deportation process for criminal
aliens released on bond is lengthy

Criminal aliens who are released on bond or their own recognizance often spend prolonged periods in the deportation process before they are deported or their cases are otherwise resolved.

A NYDO official told us that the deportation process is expedited for aliens who are being detained at the SPC. The 891 criminal aliens deported directly from the SPC were those who could not or preferred not to post bond. About half of them were deported within 18 days of their arrival at the SPC, and 91 percent were deported within 3 months. However, when aliens are released on bond or recognizance, the deportation process is not expedited, because they are not being detained at government expense. According to the Office of the Chief Immigration Judge, criminal aliens are not given priority in the hearing process. Of the 474 detainees released from the SPC, 17.5 percent, or an estimated 83 detainees, were eventually deported or voluntarily departed as of July 1, 1986. The deportation process for 57 percent of these detainees ranged in length from 90 days to 2-1/2 years.

An estimated 12 (2.5 percent) of the 474 criminal aliens released had been granted relief from deportation. A criminal alien can be granted relief from deportation on several grounds. Among these is section 244(a) of the Immigration and Nationality Act, which allows an alien to request suspension of deportation on the grounds that the alien has been in the United States for at least 7 years, is of good moral character, and deportation would be a hardship on the alien and/or the alien's family. If granted, the alien's status is changed from that of deportable alien to one lawfully admitted for permanent residence. The immigration judge normally requests an investigation before ruling on the request. The two cases in our sample in which criminal aliens were granted relief from deportation took 8 months and 12 months to resolve.

About 5 percent, or an estimated 24 of the 474 cases, were terminated. There were four cases in our sample which were terminated because NYDO learned that the alien had been convicted of a crime while on INS bond and was serving a prison sentence, or the alien died prior to completion of the deportation process.

An estimated 195 of the 474 cases (41.1 percent) were in the deportation process as of July 1, 1986. Seventy-nine percent of these had been in process for more than 1 year, 36 percent for more than 2 years, and 18 percent for more than 3 years. About 39 percent of the detainees whose cases were in process were applying for relief from deportation. Additionally, case files for 21 percent of the cases in process as of July 1, 1986, did not indicate that any action had been taken since July 1, 1985.

Some criminal aliens absconded

Based on our sample of the 474 criminal aliens released from the SPC, 24 percent, or an estimated 113, absconded during the deportation process. Some of these had been reapprehended and absconded again. Additionally, an estimated 41 criminal aliens whose cases were still in process as of July 1, 1986, may also have absconded, since their files showed no activity since July 1, 1985.

Aliens are entitled to bond. INS deportation procedures require that the decision to release an alien on bond or recognizance, and the amount of the bond, be made with the objective of insuring the alien's availability for deportation proceedings and with consideration of public safety. The NYDO official who sets the bond for criminal aliens told us that his purpose is to set the bond high enough to ensure that the aliens will show up for the proceedings. He explained that the amount of the bond can be reduced by an immigration judge, the Board of Immigration Appeals, or a federal court if the alien appeals the initial decision.

Of the 19 sample cases classified as abscondees, 10 of the aliens absconded during the deportation process, and the other 9 absconded after the deportation order was issued. About 68 percent of the abscondees had been released from the SPC for less than 1 year when they absconded.

Some criminal aliens committed crimes while released

Thirty-five percent, or an estimated 166, of the 474 released aliens were arrested for criminal offenses; and 23 percent, an estimated 109 aliens, were convicted prior to the time they were deported, absconded, or otherwise completed the deportation process.

Following are example of cases of criminal aliens who committed crimes after being released from the SPC.

- The alien was released on bond in March 1983 and deported in April 1984. During this period, he was arrested five times on eight charges, mostly involving drugs and weapons, and was convicted twice. Although deported, he evidently returned, since he was arrested in August 1984 on drug charges. He was redeported in March 1985 but was arrested again in July 1986 on drug charges.
- An alien was released on bond in May 1983. Between July 1983 and December 1985, he was arrested eight times, mainly on drug charges, was convicted twice, and served a brief sentence. Because he failed to appear for a deportation hearing five times, INS forfeited his bond and categorized him as an abscondee.

-- An alien was released on bond in July 1984. He then applied for a waiver of deportation and cited a letter from his parole officer as support. In February 1985, he was arrested on assault, robbery, and weapons charges. The waiver was approved on March 7, 1985. On March 11, the alien was arrested for attempted murder. He began serving a prison sentence in February 1986.

NYDO HAS BEGUN TO CONDUCT DEPORTATION
HEARINGS IN STATE PRISONS

Using minimum security facilities to detain serious criminals pending their deportation hearings has proven to be an inappropriate and dangerous use of resources. Releasing them into the community has, at times, proven even worse. NYDO could have alleviated these problems by more promptly implementing plans stated in the SPC's environmental impact statement in April 1980. These plans indicated that serious criminals would have their hearings conducted in penal institutions where they are confined and be deported directly from these facilities without entering INS detention.

During our review, NYDO, the Executive Office of Immigration Review, and the New York State Department of Correctional Services implemented a program to conduct deportation hearings in state prisons. The initial hearings took place in July 1986. Twenty-eight prisoners had hearings at Ossining State Prison and 12 received final orders of deportation. Hearings for the rest were adjourned to October 28, 1986, mainly because the prisoners' attorneys were absent. NYDO was planning to hold about 150 hearings in prison in late October.

The benefits of conducting deportation hearings in prisons accrue to INS, noncriminal detainees, and the community at large. INS avoids having to detain criminal aliens in a facility not designed for the task and the consequent need to siphon off resources to meet the special security problems caused by housing a criminal population. Passive, noncriminal detainees experience a safer and more secure detention environment. And the community is protected from the possibility of criminal aliens absconding or committing more crimes while released on bond or after escaping.

To obtain maximum benefits from this program, NYDO must institute controls to ensure that it (1) promptly identifies and establishes the deportability of prisoner-aliens before they become eligible for parole, and (2) selects for hearings only those criminal aliens who are appropriate candidates for this expedited deportation program.

Under the program, the New York State Department of Correctional Services provides NYDO with periodic reports of state prisoners who claim foreign birth, listed chronologically by date of their next scheduled state parole hearing. NYDO is requested to provide the state with each prisoner's alien

registration number, if any, and his current status (illegal alien, permanent resident alien, naturalized citizen, or Mariel Cuban). This helps the state to plan the rehabilitation needs of the prisoners. It also enables NYDO to schedule investigations aimed at determining whether the prisoner is deportable and issuing a detainer (a notice to the prison that the alien is to be held for INS custody upon completion of his sentence). The information must be provided and the investigations completed before the prisoners become eligible for parole into the state parole system. Otherwise, the state might unknowingly parole a prisoner who should have been deported.

NYDO has been receiving monthly prisoner listings from the state since June 1984. In January 1986, the state revised the listing format at NYDO's request. As of June 1, 1986, NYDO had provided appropriate data to the state on almost all Cuban-born inmates.⁴ However, as of July 1, 1986, NYDO had not provided complete information on 1,082 of 1,500 other foreign-born prisoners. NYDO had not provided any information on other foreign-born prisoners since January 1986. NYDO representatives stated that investigative resources have been decreasing and had been strained by the need to provide investigators to help secure the SPC against suspected escape attempts and threats of rioting.

NYDO must also ensure that it selects the appropriate prisoners for this expedited deportation program. According to the New York State Department of Correctional Services, the first group of prisoners NYDO scheduled for hearings included one individual who had been dead for nearly 2 years, three who had been released from prison in the early 1980s, and several others who were not eligible for parole until well into the 21st century. Selecting inappropriate prisoners for the expedited deportation program may result in prisoners more appropriate for the program being sent to the SPC instead of being deported.

⁴New York State requested NYDO to give priority to Cuban inmate lists to meet the certification requirements of Public Law 99-180, which provides federal reimbursement to states which incarcerated Mariel Cubans during the period October 1, 1985, to September 30, 1986.

Requests for copies of GAO reports should be sent to:

U.S. General Accounting Office
Post Office Box 6015
Gaithersburg, Maryland 20877

Telephone 202-275-6241

The first five copies of each report are free. Additional copies are \$2.00 each.

There is a 25% discount on orders for 100 or more copies mailed to a single address.

Orders must be prepaid by cash or by check or money order made out to the Superintendent of Documents.

United States
General Accounting Office
Washington, D.C. 20548

Official Business
Penalty for Private Use \$300

Address Correction Requested

First-Class Mail
Postage & Fees Paid
GAO
Permit No. G100