United States General Accounting Office

GAO

Report to the Chairman, Subcommittee on Immigration, Refugees, and International Law, Committee on the Judiciary, House of Representatives

October 1989

IMMIGRATION CONTROL

Deporting and Excluding Aliens From the United States

GAO/GGD-90-18

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

General Government Division

B-232893

October 26, 1989

The Honorable Bruce A. Morrison
Chairman, Subcommittee on Immigration,
Refugees, and International Law
Committee on the Judiciary
House of Representatives

Dear Mr. Chairman:

This report responds to the Subcommittee's request that we examine the procedures used to deport or exclude aliens from the United States.

As arranged with the Subcommittee, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days after the report date. At that time, we will send copies of this report to the Attorney General, Department of Justice; the Commissioner, Immigration and Naturalization Service; the Director, Executive Office for Immigration Review; and other interested parties.

Major contributors to this report are listed in appendix VI. Please call me on 275-8389 if you have any questions.

Sincerely yours,

Lowell Dodge

Lowell Dodge
Director, Administration of
Justice Issues

Executive Summary

Purpose

Deporting aliens who have been in the country illegally sometimes takes 5 or more years. The House Judiciary Subcommittee on Immigration, Refugees, and International Law, which was concerned about this delay, asked GAO to assess the deportation process.

As requested, GAO analyzed (1) the legal and administrative provisions governing the release of aliens pending their deportation hearings and appeals, (2) the frequency and conditions under which aliens are released pending those hearings and appeals, and (3) how often aliens do not appear at those hearings and the consequences of their non-appearances.

Background

When Congress passed the Immigration and Nationality Act of 1952, the illegal flow of aliens into this country was not a major problem. Since then, however, the flow has become a torrent. For example, apprehensions of aliens illegally entering the country have risen from 45,000 in 1959 to 1.2 million in 1987. (See p. 14.)

The Attorney General has the authority to deport aliens found to be here illegally. Within Justice,

- the Immigration and Naturalization Service (INS) apprehends, maintains custody of, prosecutes, and ultimately removes aliens; and
- Immigration judges in the Executive Office for Immigration Review hold deportation hearings, and the Board of Immigration Appeals hears appeals of immigration judges' decisions. The Board's decisions may be appealed through the federal courts. (See pp. 16-18.)

The act contains many provisions that aliens can use to request relief from deportation. Aliens can also appeal adverse decisions regarding their deportation. For example, aliens who are here illegally can request that their deportation be suspended by showing that (1) they have resided in this country for 7 years, (2) they have demonstrated "good conduct," and (3) their deportation would result in extreme hardship on their family. (See pp. 13-14.)

To make its assessment of the deportation process, GAO analyzed random samples of deportation cases in INS' New York and Los Angeles District offices. (See p. 21.)

Results in Brief

Detaining all aliens who INS believes should be deported is impractical. They are usually released on bond or on their own recognizance pending their deportation hearings. However, on the basis of GAO's sample, about 27 percent had not appeared at their hearings, which effectively stopped resolution of their deportation cases. Their non-appearance can be attributed, in part, to aliens not being notified by INS of the time and place of their hearings. But their non-appearance may also be due partly to the general lack of repercussions (other than bond forfeiture) for failing to appear. For example,

- Immigration judges have tended not to rule on the available evidence when the aliens are absent because of concerns that the aliens may not have received proper notification of their hearings.
- Aliens who have failed to appear but are reapprehended are still entitled to apply for relief from deportation. Also, they can use the delay in their deportation process to provide time to meet requirements in the act for such relief.
- INS resource constraints limit its ability to pursue the reapprehension of aliens who fail to appear.

Deporting aliens who do not qualify for statutory relief is one of several interrelated components of immigration policy. GAO's work has shown that the deportation component does not work well. And if it is to be an effective part of our immigration system controls it must be improved. But deciding exactly how far to go in terms of strengthening the deportation program is inextricably related to the issue of how Congress wants the immigration laws to be enforced.

Congressional intent with regard to major aspects of immigration policy was clarified greatly with passage of the Immigration Reform and Control Act of 1986. But even then there was not an overall consensus on just how far enforcement actions should go. It has been extremely difficult to forge consensus on immigration issues taking into account acceptable constitutional safeguards, economic tradeoffs, and humanitarian concerns. Consequently, GAO believes the best process for deciding the extent to which, if at all, major statutory changes in the deportation area are needed is through hearings held by the Judiciary Committees. GAO does make recommendations that, in the interim, could improve the deportation process.

Principal Findings

Relatively Few Aliens Are Deported

Although millions of aliens entered the country illegally, only about 22,000 aliens on the average have actually been deported annually over the past 3 years. (See p. 16.)

Aliens Fail to Appear for Hearings

GAO estimated that about 27 percent of the apprehended aliens failed to appear for their deportation hearings in New York and Los Angeles. Virtually all of the aliens had been charged with entering the country illegally and most had attended at least one hearing before not appearing at a following hearing.

Generally, when aliens have failed to appear, immigration judges have closed the cases. Although immigration judges can hold hearings in absentia and issue final decisions on deportation of aliens who fail to appear, they have been reluctant to do so because the aliens may not have been notified of the date, time, and place of their hearings.

At present, aliens are notified by letter of the time and place of the hearings. While INS relies upon aliens to provide accurate mailing addresses, INS does not verify the addresses and therefore, cannot assure immigration judges that aliens have received notification of their hearings. INS could avoid the notification problem by personally notifying the aliens before releasing them on bond or personal recognizance. To do so will require INS to coordinate with the Executive Office for Immigration Review—the office responsible for setting the hearing date and location. (See p.22.)

No Repercussions for Non-Appearance

Aliens who do not appear at their deportation hearings suffer no consequences. Further, by delaying the deportation process—such as not appearing for hearings—aliens may prolong their stay in the United States and develop justification to remain here legally. If they are reapprehended, these aliens are entitled to apply for relief from deportation, just like aliens who comply with our laws.

By residing here for 7 years, establishing roots in the community, undertaking positive and beneficial activities, and establishing a family, the aliens may meet the act's provisions for obtaining relief from deportation. (See p. 31.)

INS Workload Exceeds Resources

Given the funding available for dealing with immigration issues, INS cannot apprehend most aliens here illegally, detain most aliens whom it apprehends, pursue most aliens who fail to appear for hearings, or ensure their removal when ordered to depart. (See pp. 32 and 49.)

Instead, INS emphasizes identifying and removing aliens who have committed crimes for which they could be deported (e.g., convicted of certain crimes such as violating drug abuse laws). Also, INS gives low priority to apprehending aliens whose only crime is being here illegally. For example, of the estimated 2,282 failure to appear cases in New York, INS did not pursue 57 percent. (See p. 32.)

Recommendations

To improve notification procedures, GAO recommends that the Attorney General direct INS and the Executive Office for Immigration Review to develop a way for INS to inform aliens of their hearing date and location before they are released. (See p. 35.)

GAO also recommends that Congress amend the act to preclude (1) aliens from accumulating time toward relief from deportation after the hearing process has started, and (2) aliens who fail to appear for their deportation hearings after being properly notified from using the act's provisions for relief from deportation. (See p. 52.)

Agency Comments

Justice noted that it would be generally in favor of legislative modifications that curtail incentives for alien non-appearance at hearings. Also, consistent with GAO's recommendation, INS and the Executive Office for Immigration Review have jointly undertaken efforts to improve the notification process. (See pp. 37-38 and 53.)

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Abbreviations

BIA	Board of Immigration Appeals
EOIR	Executive Office for Immigration Review
FBI	Federal Bureau of Investigation
INA	Immigration and Nationality Act
INS	Immigration and Naturalization Service
IRCA	Immigration Reform and Control Act
NCIC	National Crime Information Center

Introduction

The Immigration and Nationality Act of 1952[1] (INA) authorizes the Attorney General to exclude certain aliens (deny them admission into the United States) or deport (expel) certain aliens after they have entered. Within the Department of Justice, the Immigration and Naturalization Service (INS) is responsible for enforcing the act.

INS offers most aliens who are excludable or deportable (other than criminals and subversives) the opportunity to leave the country voluntarily. Aliens who do not leave voluntarily, however, are entitled to an administrative hearing[2] to determine whether they may be (1) admitted into or remain in the country, or (2) excluded or deported. Pending their hearing, some aliens are detained, but most are released on bond or on their own recognizance. Aliens may apply for exemption from or postponement of exclusion or deportation. They can also appeal decisions regarding their status through Justice and the federal courts.

In fiscal year 1987, INS apprehended at borders and within the country 1.2 million aliens, most of whom entered the country illegally (deportable). About 1.1 million of these individuals left the country voluntarily. During this year, another 22,579 deportable aliens were expelled. At ports of entry, INS stopped another 728,000 excludable aliens who withdrew from the country voluntarily. During the year, another 1,940 excludable aliens, who had not agreed to withdraw voluntarily, were denied entry. As of September 30, 1987, about 220,000 aliens were either awaiting deportation or exclusion hearings or remained in the country after being ordered to leave.

Who Is Excludable or Deportable?

Aliens enter the United States legally or illegally. Generally, legal entry requires aliens to first obtain visas at a U.S. consulate and appropriate travel documents, such as passports, from their own government. They then present themselves for INS inspection at a U.S. port of entry.

Aliens may enter legally as either "immigrants" or "nonimmigrants." Immigrants enter for purposes of becoming lawful permanent residents. In fiscal year 1987, a total of 601,516 aliens were admitted as immigrants. Of these, 270,000 were permitted to enter for family reunification purposes, but some were authorized to enter because their occupational skills were needed in the United States. In addition to the

[1] 8 U.S.C. 1101

[2] The term hearings, as used in this report, includes those that are scheduled for either deportation or exclusion cases, unless otherwise noted.

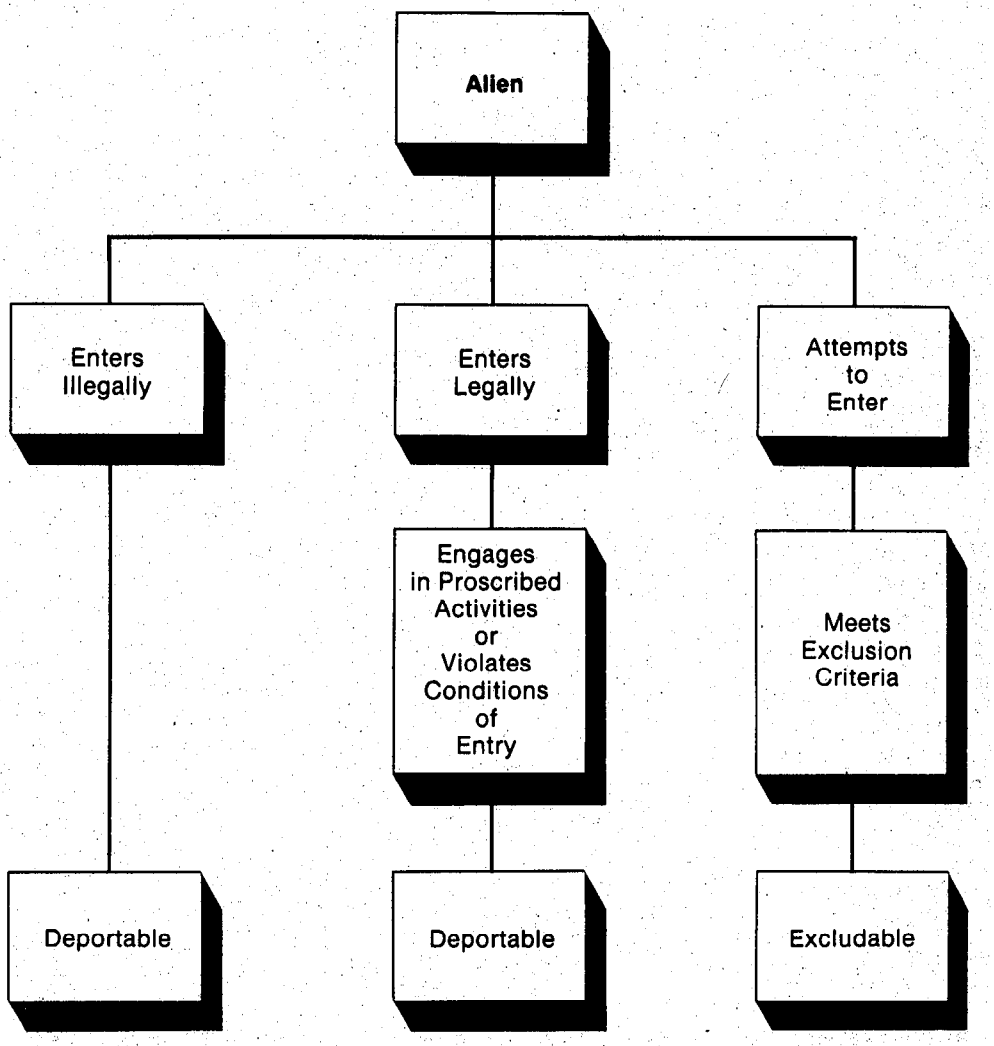
270,000 aliens, a limited number of refugees and an unlimited number of immediate relatives—spouses, parents, and children of U.S. citizens—were also admitted as immigrants.

Nonimmigrants are admitted for a specified period of time for a specific purpose, such as tourism, business, or schooling. In fiscal year 1987, 12.3 million nonimmigrants arrived. Under certain conditions, nonimmigrants in the United States may apply to INS to have their status changed to that of immigrant.

Aliens enter illegally by evading INS inspection. They might cross a U.S. border between ports of entry or enter at a port of entry and present fraudulent entry documents. Illegal entry is a criminal violation with a penalty of up to 6 months' imprisonment and/or a $500 fine upon conviction. In fiscal year 1987, 182 aliens were convicted of illegal entry. In that year, INS reported that 1.2 million aliens, most of whom entered illegally, were apprehended.

The INA specifies the reasons why an alien can be excluded or deported. Figure 1.1 identifies who is excludable or deportable.

Figure 1.1: Who Is Excludable or Deportable?



If aliens are to be excluded from entry, INS needs to make the exclusion decision when the aliens present themselves for admission to the country at a port of entry. INS makes the decision on the basis of 33 conditions set out in the INA. For example, aliens are to be excluded if they: have a dangerous contagious disease; are narcotic addicts, convicted criminals, or members of subversive organizations; are seeking to enter to obtain unauthorized work; or lack valid visas, passports, or other required documents. About 72 percent of the 1,940 aliens excluded in fiscal year 1987 were excluded because they attempted to enter without being inspected or because they lacked proper entry documents.

Deportation cases arise after an alien has already entered the country—either legally or illegally—and meets one of the INA's 20 conditions for deportation. Under the INA, aliens may be deported if they

- were excludable at the time of their entry;
- entered illegally, i.e., without undergoing INS inspection;
- entered legally but violated the conditions of their entry, such as overstaying their required departure date or working without authorization;
- are convicted of certain crimes, violate drug laws, or engage in immoral activities;
- were smuggling other aliens into the country;
- are members of totalitarian or communist organizations or were associated with Nazi governments; or
- advocate or engage in subversive activities.

About 72 percent of the 22,579 aliens deported in fiscal year 1987 were aliens who entered illegally.

Deportation: Difficulties in Expelling Aliens Here Illegally

The Alien Act of 1798, the first attempt to restrict immigration, allowed aliens to be deported if they were found to be dangerous to the peace and safety of the United States. Beginning in 1875, Congress passed a series of laws that barred foreigners on many grounds, including immorality, poor health, and criminality. Present-day exclusion and deportation policies are much the same as when they were first established by the INA in 1952.

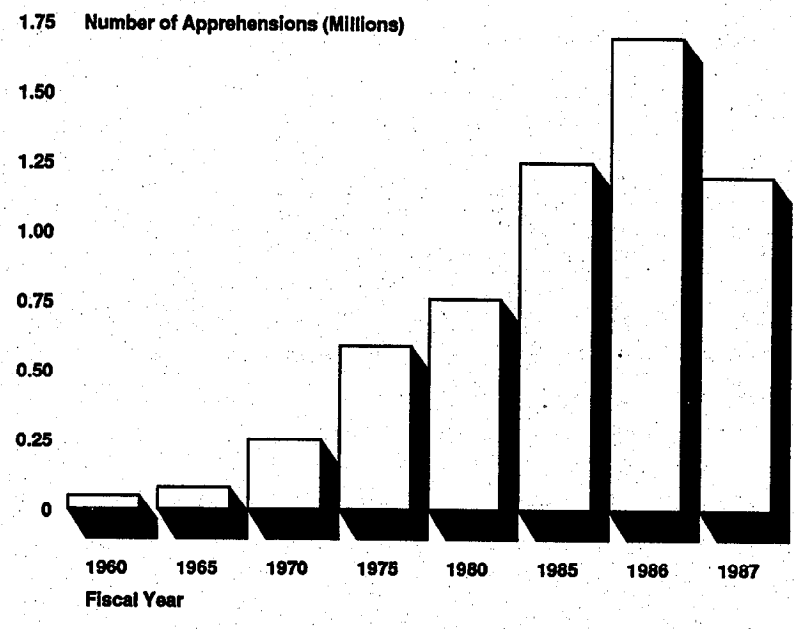
In some respects, the INA provides for the humanitarian treatment of aliens. The act recognizes that aliens might suffer such hardship as separation of families because of their deportation. Consequently, the INA also offers aliens opportunities to obtain relief from deportation or to adjust their status so they can remain in the United States legally. Throughout the deportation and exclusion processes, aliens can appeal adverse rulings through Justice, to the federal courts, and to the Supreme Court. They can also file motions to have their cases reopened or decisions reconsidered. In addition, the INA permits aliens to request that their exclusion be waived or to request relief (exemption) from a deportation order. For example, aliens can request immigration judges to suspend their deportation. To qualify, aliens must show 7 years of continuous physical presence in the United States; prove good moral character during that period; and demonstrate that deportation would result in extreme hardship to themselves or their spouses, parents, or

children who are citizens or lawful permanent residents. See appendix I for a detailed discussion of the processes.

While aliens here illegally have many opportunities under the INA to remain, many aliens trying to immigrate legally often have to wait years. In February 1989, for example, visa applications were still being processed for Filipinos who had applied between 1977 and 1984. Some applications went as far back as 1972.

However, the illegal immigration situation has changed dramatically since the passage of the INA in 1952 and the removal of aliens from the United States has taken on greater urgency as the illegal alien population has burgeoned. Illegal immigration, as measured by the number of aliens apprehended by INS, has soared over the past 3 decades. In fiscal year 1959, for example, about 45,000 aliens were apprehended. By the late 1970s and into the early 1980s, INS averaged more than 1 million alien apprehensions annually. In fiscal year 1986, INS apprehended nearly 1.8 million aliens, and the Border Patrol estimates that two successful illegal entries are made for every alien who is apprehended. More than 90 percent of the aliens whom INS apprehends as they try to enter illegally are Mexicans, most of whom agree to return to Mexico rather than contest their removal. Figure 1.2 shows the growth of INS apprehensions at U.S. borders, which points to a growing illegal alien population in the United States.

Figure 1.2: INS Apprehensions at U.S. Borders



Source: INS.

To respond to the flow of illegal aliens into the country and to clarify major aspects of immigration policy, Congress passed the Immigration Reform and Control Act (IRCA) of 1986. Under IRCA, aliens who had been in the United States illegally since before January 1, 1982, could obtain permanent legal status. Approximately 2.9 million aliens obtained legal status under IRCA and thus will no longer be deportable on the basis of their initial illegal status. IRCA also seeks to stem the tide of illegal immigrants by removing a magnet that lures them to this country: jobs. Under IRCA, employers are prohibited from hiring aliens who are not authorized to work. Employers can receive civil and criminal penalties for hiring them.

IRCA's impact in preventing illegal immigration may not be realized for many years. For example, government officials in France and the Federal Republic of Germany believed that it took 3 or more years before their similar laws became a deterrent to employment of illegal aliens.[3] Therefore, the existing deportation process is relied upon to remove aliens.

[3]Information on the Enforcement of Laws Regarding Employment of Aliens in Selected Countries (GAO/GGD-82-86, Aug. 31, 1982) and Illegal Aliens: Information on Selected Countries' Employment Prohibition Laws (GAO/GGD-86-17BR, Oct. 28, 1985).

Relatively Few Aliens Are Deported

In comparison to the number of aliens in the United States who are potentially deportable, the number of aliens placed into deportation proceedings has been relatively small. Even fewer have been actually deported. Although exact statistics are difficult, if not impossible, to obtain, the following estimates suggest the role deportation has played in confronting the deportable alien problem.

INS does not know of and consequently does not apprehend most potentially deportable aliens. The Bureau of the Census estimated the population of aliens here illegally in 1980 (those who entered the country without INS inspection and those who entered legally but violated conditions of their visas) at 2.5 to 3.5 million. Census also estimated a net addition of 200,000 immigrants per year entering illegally, some of whom enter illegally for temporary periods. In addition to these potentially deportable aliens, an unknown number of lawful permanent resident aliens may become deportable because they have engaged in criminal, immoral, drug-related, or other proscribed activities. This number of potentially deportable aliens has been reduced by about 2.9 million aliens who should obtain legal status under IRCA. Thus, an estimated 1.2 to 2.2 million potentially deportable aliens reside within the country.[4]

On average over the past 3 years, about 85,000 aliens have been placed into deportation proceedings each year, and 22,000 aliens are deported—about one-fourth of those placed into deportation proceedings and about 1 to 2 percent of the total estimated deportable alien population.

Many aliens who have been apprehended by INS and notified to appear for a deportation hearing do not appear, which further affects the ability of INS to deport aliens.

Organizations and Resources Involved in Excluding or Deporting Aliens

The Attorney General is responsible for administering and enforcing immigration and naturalization laws. The process of excluding or deporting aliens involves several groups within Justice and the federal judiciary. In general, INS carries out the enforcement role, apprehending, maintaining custody of, prosecuting, and removing excludable and deportable aliens. Justice's Executive Office for Immigration Review

[4]Added to the 1980 Census estimate of 2.5 to 3.5 million illegal aliens are 1.6 million aliens entering illegally from 1981 to 1988 (200,000 per year) for a total of 4.1 to 5.1 million. This estimate is reduced by 2.9 million aliens who applied for legalization under IRCA (or 1.2 to 2.2 million).

(EOIR) adjudicates exclusion and deportation cases. The federal judiciary handles appeals of EOIR decisions.

INS Responsibilities

INS operates out of a central office; 4 regional offices; 33 domestic district offices, each headed by a district director; and 162 staffed ports of entry.[5] Within each district, the enforcement structure, as it pertains to excluding and deporting aliens, consists of the following elements:

- Investigations: This group identifies, locates, and apprehends deportable aliens.
- Inspections: This group facilitates the entry of qualified applicants at ports of entry and identifies and denies admission to unqualified persons.
- District counsel: This group includes trial attorneys who present the government's case at deportation and exclusion hearings. In addition, INS special assistant U.S. Attorneys are found in 16 U.S. attorneys' offices. They handle civil immigration litigation in the federal courts. In five of the offices, they also handle criminal immigration prosecution.[6]
- Detention and deportation: This group detains deportable and excludable aliens, oversees the processing of their cases, and removes them from the United States. INS operates seven detention centers and obtains additional detention space through contracts.

INS also operates 20 Border Patrol sectors. The Border Patrol is responsible both for preventing the entry of aliens between ports of entry and for apprehending aliens in border areas.

For fiscal year 1987, 5,322 positions at a cost of about $265 million were allocated to investigations, detention and deportation, inspections, and general counsel. However, specific budget estimates for exclusion and deportation costs are not readily available because most of the personnel also engage in other activities. For example, investigators investigate individuals who traffic in fraudulent immigration documents, while inspectors approve or deny aliens' requests for such benefits as extended stays in the country.

[5]Other ports of entry are not permanently staffed.

[6]Appellate trial attorneys are assigned from the INS Office of General Counsel and INS field offices to present the government's position before the Board of Immigration Appeals. Further, an attorney is permanently assigned to handle BIA matters.

Executive Office for Immigration Review

EOIR is headed by a director and consists of two levels of adjudication—immigration judges, who report to the Chief Immigration Judge, and the Board of Immigration Appeals (BIA).

Immigration judges located in field offices throughout the country hold formal exclusion and deportation hearings. At the hearings, they consider aliens' applications for relief from exclusion and deportation and ultimately decide whether or not to exclude or deport them. As of June 1, 1989, 69 immigration judges were located in 21 cities and EOIR headquarters. In fiscal year 1987, immigration judges completed about 118,000 cases that involved alien deportability or excludability.[7] Before EOIR was created in January 1983, special inquiry officers of INS held exclusion and deportation hearings.

BIA hears appeals from decisions of immigration judges and INS. BIA is a quasi-judicial body composed of a chairman and four members appointed by the Attorney General. It is located in Falls Church, Virginia, where it renders decisions for the entire country.

BIA relies on the record of the previous proceeding before an immigration judge to make a decision but it may also hear oral arguments. Its decisions are binding on all INS officers and immigration judges unless modified or overruled by the Attorney General. The decisions are also subject to judicial review in the federal courts. In fiscal year 1987, BIA completed about 6,000 cases that involved deportation and exclusion. As of October 1, 1988, 7,901 cases were pending.

For fiscal year 1987, the total EOIR budget was estimated at about $20.5 million.

Federal Judiciary

BIA decisions can be appealed through the federal courts. There are 94 federal judicial districts, each containing a district court. Appeals of district court decisions are heard by the U.S. Court of Appeals. There are 12 appeal or circuit courts. The U.S. Supreme Court handles appeals from the U.S. Courts of Appeal.

[7]Other cases do not pertain directly to exclusion or deportation but involve issues such as aliens' requests to have bond amounts lowered.

Congressional Concerns

Because of concern over the means used by some aliens to obtain relief from or delay their deportation and exclusion, immigration law has been changed and additional legislation introduced.

The Immigration Marriage Fraud Amendments of 1986 deny immigrant status to nonimmigrant aliens in the United States who are applying for such status on the basis of a marriage into which they entered during their deportation or exclusion proceedings. Under the amendments, the alien must leave and reside outside the United States for a 2-year period after the marriage before an immigrant visa will be approved.

IRCA contains provisions aimed at a more efficient deportation process. One provision requires the Attorney General to expedite deportation proceedings for criminal aliens. Another requires that nonimmigrant aliens (other than immediate relatives of U.S. citizens) who apply to have their status adjusted to immigrant aliens must be in a legal immigration status at the time they apply. Previously, such aliens could apply after their legal nonimmigrant status had expired.

H.R.3187 (99th Congress) would have established an independent U.S. Immigration Court under Article I of the Constitution to replace the existing EOIR administrative hearing structure under the Attorney General. H.R.1510 (98th Congress), which the House Committee on the Judiciary reported on May 13, 1983, would have established a U.S. Immigration Board within Justice. Both bills included provisions to (1) allow INS to exclude aliens without a hearing under certain circumstances, (2) revise procedures for judicial review of exclusion and deportation cases, and (3) alter the handling of asylum cases and establish time frames for processing such cases. These provisions are discussed further in appendix III.

The Anti-Drug Abuse Act of 1988 provides for expedited deportation for aliens who are convicted of such aggravated felonies as murder, drug trafficking, or trafficking in firearms or destructive devices, or attempts or conspiracies to commit such acts. The act requires the Attorney General to provide for special deportation proceedings to be held at federal, state, and local correctional facilities. Proceedings are to be initiated and, if possible, completed before the aliens finish serving their sentences. If taken into INS custody, such aliens may not be released. The act also reduces from 6 months to 60 days the time allowed for such aliens to petition for judicial review of their deportation orders.

Objectives, Scope, and Methodology

In a June 10, 1987, letter, the House Judiciary Subcommittee on Immigration, Refugees, and International Law requested that we examine alien exclusion and deportation procedures. Our review was aimed at determining what, if any, improvements were needed in the management of the deportation and exclusion processes.

As agreed with the Subcommittee, we obtained information on the

- administrative and judicial framework used to exclude and deport aliens, including the various actions aliens can take to remain in the country;
- number of aliens that do not appear at scheduled deportation and exclusion hearings, including a review of their case files, in INS' New York and Los Angeles Districts; and
- length of time to complete the deportation and exclusion processes in INS' New York and Los Angeles Districts.

We also agreed to analyze H.R.3187 (99th Congress) and H.R.1510 (98th Congress), which would have altered the handling of exclusion and deportation cases, to determine how these proposed bills could affect the exclusion and deportation processes.

Our review was based primarily on (1) an examination of applicable laws and regulations; (2) an examination of policies, procedures, and records at and discussions with representatives of INS' Central Office and New York and Los Angeles District Offices as well as EOIR headquarters and New York and Los Angeles field offices; and (3) an analysis of completed deportation and exclusion cases in New York and Los Angeles.

These two offices were selected because in fiscal years 1986 and 1987, they accounted for approximately 34 percent of the exclusion cases and 25 percent of the deportation cases completed by EOIR nationwide. In addition, these two districts account for the largest combined number of exclusion and deportation cases of any two other INS districts. We also discussed the results of our work in these two locations with INS and EOIR representatives in El Paso, Texas; Miami, Florida; and San Diego, California to determine if there were any similarities to or differences from the results of our work in New York and Los Angeles. Unless otherwise indicated, the matters described in this report are similar in all five districts, according to INS officials.

To review the deportation and exclusion processes, we sampled six types of cases in INS' New York and Los Angeles District Offices. (See table II.1.) In general, our samples were drawn from the universes of available cases that were closed during a 1-year period (1987) in New York and a 3-month period (January 1 to March 31, 1987) in Los Angeles. When the universe of a type of case was so small that the sampling errors would be too large to make meaningful projections, we selected all available cases for review. Otherwise, random samples were taken. The size of each random sample was determined by using a 95-percent confidence level, with an error of plus or minus 10 percent. (See appendix IV for the sampling errors for estimates used in this report.)

A detailed description of our objectives, scope, and methodology is contained in appendix II. Our review did not (1) evaluate the extent to which aliens' rights are protected throughout the process, (2) analyze the substance of the proceedings and the legal issues involved, (3) analyze the quality of the hearing process, or (4) assess BIA's and immigration judges' decisions. We did our work between July 1987 and April 1989. Our work was done in accordance with generally accepted government auditing standards.

The Department of Justice provided written comments on a draft of this report. These comments are discussed in chapters 2 and 3 and are included in full in appendix V.

Some Aliens Have Not Appeared for Deportation Hearings

Aliens who are released from INS custody pending their deportation hearings frequently have not appeared at their deportation hearings. In part this may be attributable to aliens not having received notification of the time and place of their hearings. However, given that aliens generally have not suffered negative repercussions for failing to appear, other than forfeiture of their bonds, and given that INS has not vigorously pursued reapprehension of those aliens, there seems to be little incentive for aliens facing deportation to appear at hearings. Moreover, even though these aliens may be ordered deported in absentia, immigration judges told us they are reluctant to do so because of their doubts that aliens have been properly notified of the time and place of their hearings.

Some Aliens Did Not Complete the Deportation Process

National statistics on aliens who fail to appear for deportation hearings are not readily available. However, existing data indicate that this is a significant problem. We estimated that about 27 percent of the deportation cases were closed because the aliens failed to appear for their hearings. In New York, an estimated 2,282 of 6,501 cases (35 percent) were closed during the period August 1, 1986 to July 31, 1987, because the aliens failed to appear. In Los Angeles, an estimated 1,071 of 5,963 cases (18 percent), from January 1, 1987 to March 31, 1987, were closed for the same reason.

Data provided by the Chief Immigration Judge indicate that the failure to appear problem exists in varying degrees in different locations. From January 1 to May 26, 1989, the failure to appear rate was 15 percent in El Paso, 23 percent in San Diego, and 12 percent in Miami. However, from January 1 to March 31, 1989, the failure to appear rate in New York was 63 percent and in Los Angeles, 46 percent.

Several INS studies of aliens released on bond have indicated that this problem exists in other locations throughout the country. For example:

- A 1987 INS study at 19 locations found that 55 percent of aliens who had posted bonds in 1984 and 1985 failed to appear at their hearing. When INS declares a bond breached, the alien's money or security is forfeited to INS.
- A 1985 INS study in the Miami District reported that 643 of 939 aliens (or 68 percent) who had posted a bond failed to appear.

These studies do not include data on aliens who were released on their own recognizance or were not taken into INS' custody. The failure to

appear problem may be serious with such aliens because they do not have the concern of forfeiting the money or other collateral used to secure a bond should they fail to appear.

In addition, INS reported that as of September 30, 1987, the whereabouts of 56,000 aliens of 220,000 (or 25 percent) in the deportation process at that time, were unknown to INS. This includes an unknown number of aliens who failed to appear for their hearings as well as aliens who had been ordered to leave the country but may not have done so.

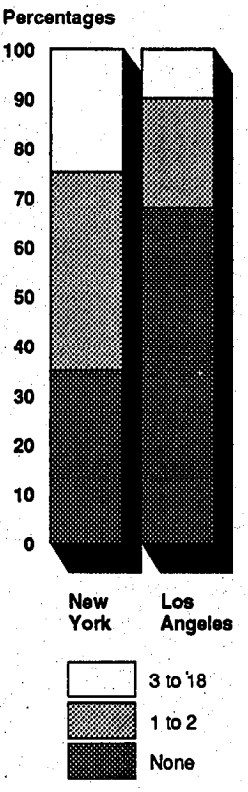
Characteristics of Aliens Who Failed to Appear

Our review showed that virtually all of the aliens who failed to appear for hearings in New York and Los Angeles, had been charged by INS with entering the United States illegally. INS considered the remainder deportable because they were drug addicts, had been convicted of drug violations or other crimes, or were excludable at the time of their entry into the country.

We estimated about 36 percent of the aliens who failed to appear for hearings in New York and Los Angeles had been in the United States for more than a year before being apprehended by INS. In these two districts, about 11 and 10 percent, respectively, had been in the country for more than 7 years.

We estimated that 800 of 2,282 (35 percent) of the aliens in New York and 718 of 1,071 (67 percent) of the aliens in Los Angeles failed to appear at their first scheduled hearing and had their cases administratively closed by an immigration judge; that is, the merits of the cases are not to be adjudicated until the alien is found and again placed into proceedings. The remaining aliens—an estimated 1,482 (65 percent) in New York and 353 (33 percent) in Los Angeles—attended at least one hearing and as many as 18 hearings prior to the immigration judges administratively closing their cases when they eventually failed to appear as shown in figure 2.1. Some aliens whose cases were administratively closed for failure to appear were later reapprehended and scheduled for deportation hearings, but again failed to appear.

Figure 2.1: Number of Hearings Aliens Attended Before Failing to Appear[a]



[a]These percentages are estimates made on the bases of our sample.

Our analysis showed that about one-half of those aliens who appeared for at least one hearing had their cases remain open for several years before being closed. For example, in New York we estimated that of 1,482 cases, 847 (57 percent) remained open for 2 or more years. In Los Angeles, 165 of 353 (47 percent) cases remained open for 2 or more years. The following are examples of cases in which aliens were apprehended but failed to appear at some of their hearings.

- In one case, an alien who arrived in the United States in August 1968, was apprehended and served an order to show cause in March 1970. The alien was released on bond and appeared at his first hearing in July 1972. Over the next 6 years, he appeared at seven additional hearings that dealt with requests for relief from deportation such as asylum. The alien's file contained no further information until October 1986, when the alien failed to appear. The immigration judge administratively closed the case, 16 years after the alien had been placed into the deportation process.

- In another case, an alien who arrived in the United States in September 1977, was apprehended and issued an order to show cause in October 1983. He failed to appear at his deportation hearing in January 1984 and his case was administratively closed. The alien was reapprehended and scheduled for a deportation hearing in December 1985. He again failed to appear, and the case was again closed. The alien was apprehended for the third time and scheduled for a hearing in March 1987. He failed to appear for this hearing and his case was again closed administratively.

Bonds Did Not Ensure Aliens Appeared for Hearings

Pending their deportation hearings, aliens may be allowed to remain free on their own recognizance or by posting a surety bond. The purpose of requiring aliens to post bonds is to ensure their presence at future deportation proceedings.

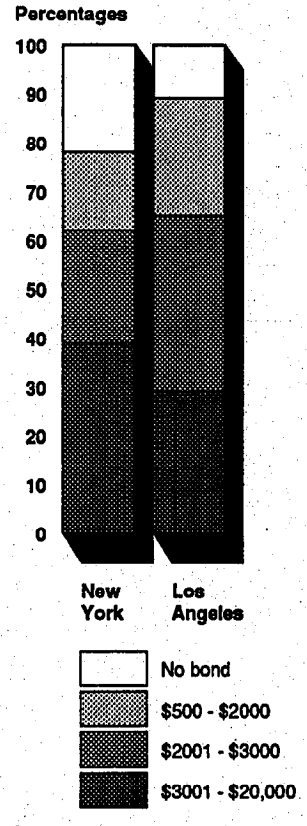
Aliens who INS believes will appear for deportation hearings are not required to post bonds. In contrast, aliens who INS believes would not appear for hearings if released on their own recognizance or on bond are detained. Most aliens in the deportation process are released on surety bonds (the posting of cash or collateral with INS). If the alien fails to appear as required, INS can declare the bond breached and the alien's money or security is forfeited to INS. Before declaring a bond breached, INS must notify the alien and/or the obligor (the person or company that guarantees the bond), and must give the alien the opportunity to appear.

When INS initiates deportation proceedings, it can either (1) arrest aliens and take them into custody (detain them), or (2) simply notify them of the intent to deport and that EOIR will contact them regarding the time and place of their hearings. If INS takes aliens into custody, it must decide whether to continue with custody or release them until their hearings.

Relatively few aliens are detained. INS-operated detention space is scarce and efforts to supplement it are done through contracting. INS has 2,239 spaces available for detainees at seven INS facilities. In fiscal year 1988, 643,000 detention days were provided through contract for detention space at an estimated cost of about $25 million. Generally, INS detains aliens who are unable or unwilling to post bond.

Figure 2.2 shows the bond amounts set by INS in New York and Los Angeles for the aliens who failed to appear.

Figure 2.2: Bond Amounts Set by INS for Aliens Who Failed to Appear for Hearings[a]



[a]These numbers are estimates made on the basis of our sample.

Although the purpose of surety bonds is to ensure that the aliens appear at meetings and hearings, our analysis of cases in New York and Los Angeles indicates that the bond, in itself, had little to do with ensuring that aliens appeared as required.

As shown in table 2.1, in New York, an estimated 62 percent of the aliens who failed to appear had been released on bond, while in Los Angeles, an estimated 72 percent had been released on bond. The fact that there was a bond evidently did not deter these aliens from failing to appear for their deportation hearings. Moreover, these percentages of aliens with bonds who failed to appear are not significantly different from the percentages of aliens with bonds who did appear for hearings—an estimated 58 percent in New York and 78 percent in Los Angeles.

Table 2.1: Comparison of Aliens With Bonds: Aliens Who Failed to Appear Versus Aliens Who Appeared[a]

	New York			Los Angeles		
	Total	Number with bonds	Percent with bonds	Total	Number with bonds	Percent with bonds
Aliens who failed to appear	**2,282**	1,412	62	**1,071**	773	72
Aliens who appeared	**2,305**	1,331[b]	58	**1,724**	1,351[b]	78

[a]These numbers are estimates made on the basis of our sample.

[b]Includes an estimated 380 aliens in New York and 53 aliens in Los Angeles who were detained.

Notification Procedures Hindered Deportation

Aliens who enter deportation proceedings must, by law, be properly notified of their hearings. Current procedures do not ensure that aliens receive proper notification. In addition, INS and immigration judges allow aliens who are awaiting hearings to travel unsupervised to locations of their choice across the nation. In our opinion, many aliens do not appear at their deportation hearings mainly through either lack of knowledge or disregard of the system. Because of the notification problems, immigration judges said that they are reluctant to deport aliens who fail to appear at hearings, in absentia.

Procedures Have Not Ensured That Aliens Receive Hearing Notification

EOIR is required by law to notify aliens of the time and place of their deportation hearings. INS (1) apprehends aliens whom it believes are in the country illegally, (2) issues them orders to show cause, which inform aliens that they must appear for deportation hearings and show cause why their deportation should not proceed, and (3) tells them to appear at hearings. INS also attempts to obtain from aliens who are released, their places of residence in the United States. INS provides this information to the appropriate EOIR office, which schedules the deportation hearing and notifies the alien of the time and place. However, at the time INS releases the alien, it does not know when the hearings will be scheduled. Further, the procedures used in obtaining addresses and transmitting the notification to aliens do not provide assurance that aliens are properly notified.

INS relies upon aliens to provide accurate addresses. While INS will not release aliens without an address, it does not know if their addresses are accurate or if the aliens have subsequently relocated. INS does not verify the addresses, and therefore cannot assure EOIR that addresses are valid or that the aliens are actually there. For example, INS representatives in San Diego said that there is no practical way for INS to verify the

addresses that aliens provide, particularly if they are out-of-state addresses. They also said that aliens often enter the country with an address of a relative or other contact point that they may use only as a temporary residence. Thus, accurate addresses become dated, making it more difficult for the aliens to receive the hearing notification as time passes.

INS representatives told us that they virtually always obtain addresses. However, they do not determine the validity of the addresses nor can they verify that the alien is at that address.

EOIR is responsible for notifying aliens of their hearings since it controls the immigration court calendar on which deportation hearings are scheduled. It notifies INS and either the alien or the alien's representative of the time and place of the hearing. EOIR's policy is to notify the alien who is not detained in writing about the first hearing, 2 weeks before the date of the hearing. Subsequent hearing notifications are provided personally by the presiding immigration judge during the course of the proceedings.

EOIR uses regular first class mail to notify aliens of their hearing dates. This procedure does not ensure that aliens receive the hearing notification because no evidence of receipt of the letter is provided. Before fiscal year 1989, EOIR generally notified aliens of their hearings through Western Union priority mail. This procedure provided EOIR with confirmation that notices had been sent but, like the current procedure, did not provide confirmation that aliens had received notices. Because of cost considerations, the Chief Immigration Judge has directed EOIR offices not to use certified mail, which would produce a signed receipt.

The Chief Immigration Judge agreed that notification was a problem during the period of our review. While still concerned about the notification problem, he said that the situation had improved as of March 1989. He indicated that when EOIR came into existence in 1983, it inherited a backlog of deportation cases (which were previously under the jurisdiction of INS special inquiry officers). He further said that addresses aliens give to INS are generally valid for a short period of time until aliens establish more permanent residences.

Because of the length of time it took EOIR to get to these cases, the aliens' addresses may no longer have been valid by the time EOIR was ready to hold hearings. The Chief Immigration Judge told us that since backlogs generally had been cleared, EOIR has been able to schedule hearings

much sooner after the order to show cause is issued. Consequently, he believes aliens are being notified of their hearings while their addresses are still valid. Since our analysis was done prior to his comments, we were unable to analyze the current situation.

Aliens' Ability to Change Hearing Location Exacerbated Notification Difficulties

Aliens under deportation proceedings may request to have their hearings held in locations other than where they were apprehended. The changes can occur at the request of the aliens or for the convenience of INS. However, INS neither tracks aliens to their new destinations, nor verifies the accuracy of the aliens' addresses at those destinations. Changes in location of deportation hearings increase the difficulty of notifying aliens. This may occur because the aliens may not know their new addresses until they reach their final destination. However, the address they provided INS at the time of apprehension may be correct.

We estimated that of the 2,282 and 1,071 aliens who failed to appear for hearings in New York and Los Angeles, respectively, an estimated 1,294 (57 percent) in New York and 850 (79 percent) in Los Angeles were apprehended in locations other than New York or Los Angeles. Of those apprehended in other locations, an estimated 753 (58 percent) of the aliens in New York and 685 (81 percent) of the aliens in Los Angeles were apprehended in San Diego.

In March 1989, the INS Commissioner said that 86 percent of aliens who applied to INS for asylum in Harlingen, Texas, and who gave New York City as their intended residence, failed to appear at INS' New York District Office within 14 days, as instructed. Similarly, aliens who gave Miami as their intended residence did not appear 66 percent of the time. The Commissioner believed that many, if not most of these aliens could not meet the standards for their asylum claims and chose not to present themselves to INS. Although these aliens were not in deportation proceedings, this situation illustrates the risks involved in allowing aliens to travel to distant locations for required appearances.

Immigration Judges Have Not Had Confidence in Notification Procedures

Aliens apprehended by INS are generally released on bond or on their own recognizance pending their deportation hearings. However, many of these aliens do not appear for their hearings. When aliens fail to appear, immigration judges may choose to (1) reset the hearing date (usually if the alien's representative is present); (2) remove the case from active status by closing the case administratively, thus, not completing the deportation process; or (3) hold a deportation hearing in absentia.

INA authorizes in absentia hearings to proceed as if the aliens were present as long as they were given notice of the hearing and reasonable opportunity to be present. The immigration judge may order an alien deported in absentia if he/she makes a determination of deportability. However, due to their perception of problems with the notification process, immigration judges in Los Angeles and New York administratively close more cases for failure to appear than through in absentia deportation hearings. In Los Angeles, we estimated 1,071 cases (18 percent) were administratively closed for failure to appear, while 302 (5 percent) were closed through deportation in absentia. In New York, an estimated 2,282 (35 percent) cases were administratively closed for failure to appear, while 214 (3 percent) were closed through deportation in absentia. Nationally, an EOIR study estimated that as of March 28, 1988, about 7 percent (8,259 cases of 113,600) of deportation cases were closed by deportation in absentia.

Judges in New York and Los Angeles said they are willing to hold deportation hearings in absentia only if they are convinced that the aliens received proper notification of the time and place of the hearing. This precludes aliens later claiming that they were not notified. In practice, the judges are satisfied this standard is met at their own hearings when they personally notify the aliens of the date of the next hearing and of the consequences of not appearing. In cases where the judge did not personally notify the alien, judges said they were reluctant to hold a deportation hearing because of their belief that there are widespread inaccuracies in alien addresses, particularly in cases where the alien had changed the hearing location. Judges administratively close these cases because they lack confidence that the aliens had received the requisite hearing notice.

According to the Chief Immigration Judge, fewer failure to appear cases are being closed administratively since 1987, the period covered by our review. He indicated that this is a result of two April 1988 BIA decisions. In those cases, after at least one hearing, the aliens failed to appear and the immigration judges closed the cases administratively rather than issuing a final decision on the alien's deportability. INS appealed to BIA arguing that hearings should have been held in absentia and final decisions issued. BIA upheld INS' appeal and remanded the cases to the immigration judges. In one case, BIA directed the immigration judge to enter a deportation order in absentia since INS had established the alien's deportability in an earlier hearing. In the other case, BIA ordered that INS be given the opportunity to establish the alien's deportability and then

to enter a deportation order in absentia. Proper notification was not an issue in either of the cases.

While these cases may establish a precedent for immigration judges to decide cases in absentia, they would not be applicable where lack of notification is an issue. Accordingly, the cases do not appear to have any impact on the frequency with which the immigration judges will close failure to appear cases due to lack of notification.

No Consequences for Failure to Appear

Under the INA, aliens who do not appear at their deportation hearings do not suffer penalties (unless they have posted a bond), or such adverse consequences as loss of appeal rights or denial of the rights to claim relief from deportation. Aliens have nothing to lose by failing to appear for hearings and, in effect, ignoring the deportation process. For example, if they are reapprehended, the deportation process continues where it was interrupted. While they are still subject to deportation, no sanctions are imposed.

Further, the additional time aliens may have accumulated in the country by avoiding deportation proceedings may support their requests for relief from deportation because of their good conduct while they were here. Failure to appear does not jeopardize their claim of good conduct when applying for relief.

By avoiding the deportation process, aliens prolong their stay in the United States. This affords them the opportunity to establish roots in the community and undertake positive and beneficial activities that can be used to support claims for relief from deportation should they be reapprehended. Aliens who post bond and fail to appear can forfeit the money or other collateral used to secure their bonds. However, such costs could be viewed as a cost of remaining in the United States. Moreover, many aliens are released on their own recognizance or are not taken into custody at all and do not suffer even the forfeiture of their bond.

INS Has Not Normally Pursued Aliens Who Fail to Appear for Hearings

INS has not normally pursued aliens who fail to appear for hearings. Investigations to locate the aliens are not always undertaken because of the lack of investigative resources and the low priority INS gives to these types of cases.

As table 2.2 indicates, INS made little effort to locate and apprehend the nearly 3,400 aliens who failed to appear for hearings in New York and Los Angeles during the periods covered by our review. In New York, the investigations branch was not requested to locate the alien in an estimated 1,294 of 2,282 cases (57 percent). In Los Angeles, the investigations branch was not requested to locate an estimated 93 percent of the 1,071 aliens who failed to appear.

Moreover, further analysis of our sampled cases which is not projectable, indicated that even when investigations were requested in New York and Los Angeles, the investigations were closed the same day they were received because of lack of investigative resources. In New York, 34 of the 42 cases in which investigations were requested were opened and closed the same day without the aliens being apprehended and 1 of the 42 investigations took more than 1 day. Data were not available for 7 cases. In Los Angeles, 5 of the 7 cases in which investigations were requested were opened and closed the same day without the aliens being apprehended. Data were not available for 2 cases.

Table 2.2: Estimated Number of Investigations to Locate Aliens Who Failed to Appear for Hearings[a]

	New York		Los Angeles	
	Number	Percent	Number	Percent
Total failure to appear cases	2,282	100	1,071	100
Investigations not requested	1,294	57	994[b]	93
Investigations requested	988	43	80[b]	7

[a]These numbers are estimates made on the basis of our sample.

[b]Our estimates exceed the total due to sampling errors associated with projections.

Nationally, the situation is similar to that in New York and Los Angeles. In fiscal year 1987, 6,174 investigations were requested with 1,219 investigations undertaken. Of the 546 cases closed, a total of 115 aliens were apprehended. When we discussed the fact that relatively few investigations were requested for aliens who failed to appear, the INS Assistant Commissioner for Detention and Deportation said she would look into why this was happening.

Investigations to locate most aliens who fail to appear for hearings have a low priority under INS' investigative case management system. The system is aimed at maximizing the impact of investigative resources. Accordingly, all investigations to enforce the immigration laws are categorized in one of two impact levels or priorities. Highest priority is given to investigations involving fraud detection, criminal alien apprehensions, and compliance with IRCA. Investigations to locate aliens who fail to appear for hearings are a lower priority. In addition, INS has not established a priority system for deciding which of the aliens who fail to appear should be pursued. Accordingly, unless the alien has been convicted of a crime, INS does not generally undertake investigations to locate aliens who fail to appear for hearings.

FBI's Information System Could Help in Locating Aliens Who Fail to Appear for Hearings

The Federal Bureau of Investigation (FBI) is considering allowing INS wider access to its National Crime Information Center (NCIC). While this access, if allowed, will be limited initially, it could eventually be expanded to allow INS to enter data into the system on aliens who fail to appear for hearings and thus, improve the chances of locating these aliens should they come into contact with a law enforcement agency.

The NCIC is a computerized information system that provides the criminal justice community a central file of criminal histories and readily available information on wanted individuals and other criminal matters. The system connects about 48,000 state, local, and federal law enforcement agencies. By quickly providing information on individuals who come into contact with law enforcement agencies, NCIC enhances the probability of apprehending fugitives and other individuals of interest to the criminal justice system.

Currently, INS enters arrest warrants on individuals involved with immigration crimes, such as fraud and alien smuggling, into NCIC. Additionally, S.976 proposed in the 100th Congress would allow NCIC to incorporate warrants for criminal aliens.

In February 1987, the NCIC Advisory Policy Board concluded that several immigration functions, including administrative functions undertaken in connection with deportation, fall within the definition of a criminal justice function. An INS investigative representative at INS headquarters told us that initially, INS wants only warrants of deportation entered into NCIC when aliens have been ordered deported but have failed to depart the country.

Because of the above issues involving the entry of data into NCIC, the FBI requested its Legal Counsel Division, and Justice's Assistant Attorney General, Office of Legal Counsel, for an opinion as to whether INS warrants of deportation could be entered into NCIC. An FBI representative informed us that as of March 1989, no opinion had been received from Justice.

At the present time, INS does not plan to enter warrants of arrest, such as those on aliens who failed to appear for hearings. This is because of NCIC's requirements for a rapid and accurate response. NCIC policy requires the agency that issued a warrant to respond to a requester (an arresting agency) within 10 minutes, affirming or negating that the individual in question is the individual the requester is seeking. It is the responsibility of the detaining agency to decide whether to continue the detention of the individual on the basis of this contact. According to an INS representative, the requirement to timely respond causes a problem because of INS' poor recordkeeping systems and the fact that INS operations are not staffed around the clock.

Conclusions

On the basis of the data developed on failures to appear in INS' Los Angeles and New York District Offices, aliens failed to appear 67 percent and 35 percent of the time, respectively, for their first scheduled hearings. However, aliens suffer no adverse consequences from their non-appearances. If reapprehended, they still can apply for relief from deportation or can file motions on their behalf. In other words, their cases continue as if nothing happened.

In order for immigration judges to decide cases on the basis of their merits, which could result in aliens being ordered deported in absentia, aliens must first receive proper notice of the scheduled hearings (date, time, and location). EOIR is responsible for notifying aliens of the time and place of their deportation hearings. EOIR uses the aliens' addresses that INS provides. INS obtains the aliens' addresses when they are apprehended but does not verify the accuracy of the address. Therefore, the immigration judges have been reluctant to assume that the aliens have received the notification of their hearings.

The problem of notification is partly related to INS' inability to inform the aliens of their deportation hearing locations and dates when they are apprehended. In our opinion, the deportation process should be changed so that INS could give this deportation hearing information to

the aliens when apprehended. Such a change should increase the immigration judges' confidence that aliens properly received notices of (1) the date, time, and location of their deportation hearings, and (2) their obligation to appear at these hearings, including the possible ramifications of not appearing.

Further affecting the notification difficulty is the aliens' ability to have their deportation hearings held in a location other than where they were first apprehended. We estimated that of the aliens who failed to appear for hearings in New York and Los Angeles, 57 percent and 79 percent, respectively, had their deportation hearing relocated. This was done without reasonable assurances that the aliens' addresses in New York and Los Angeles were valid. The improvements to the notification process, which would allow judges to decide cases on merit, could also favorably affect this aspect of the problem.

Some recent BIA decisions provide immigration judges with precedent for holding in absentia hearings under certain circumstances. However, to the extent notification problems continue, immigration judges will be limited in the use of the precedents to order aliens deported in absentia.

While improving the notification process may reduce the number of administratively closed cases, such improvements would not necessarily increase the aliens' appearance rate. Further, even if the alien is ordered deported in absentia, INS does not have the resources to locate the alien in order to execute the order. However, an increased use of FBI's NCIC, as planned, would help locate such aliens if they came into contact with law enforcement agencies. Additionally, the legislative changes discussed in chapter 3 can help alleviate the problems associated with deporting aliens.

Recommendations to the Attorney General

We recommend that the Attorney General direct the Commissioner, INS, and Director, EOIR, to jointly develop procedures to improve the notification process. The procedures should include instructions for INS to (1) use when aliens are apprehended and given an order to show cause why they should not be deported, and (2) schedule dates for deportation hearings. In developing the instructions, INS and EOIR should consider providing aliens printed requirements (and reading the requirements to them) in their native languages, of (1) their obligations to report for their deportation hearings as directed and to notify INS of any change of residence, and (2) the possible consequences, such as being ordered deported in absentia, of their failure to appear. Also INS should require

the alien to sign a form that shows that this information, including their rights and responsibilities, was discussed with and explained to them.

In connection with improving notification procedures, we recommend that the Attorney General direct INS and EOIR to develop a better means by which INS can inform aliens of their hearing date and location when apprehended. The following are suggestions for INS and EOIR to consider in establishing the aliens' hearing dates, but other means may be available that could also have the same results.

For each district,

- EOIR could establish, in conjunction with INS, a specific day(s) on which an immigration judge would be available to hold an initial hearing to inform aliens of their rights and set a date for a full hearing, if needed. This procedure would make known to INS the exact time and place of hearings, thus enabling INS to inform the alien.
- EOIR could establish procedures whereby immigration judges would alternate in 1-week or other intervals, during which judges would hold all initial hearings and set dates for future hearings if necessary. Under this procedure, INS would know that an immigration judge will always be available.
- INS could notify the alien to report to the appropriate office of the immigration judge within a specific number of days from the date the order to show cause was issued. On a daily basis, the INS district office that apprehended the aliens would forward a list of the aliens who are to report and their orders to show cause to the appropriate EOIR office and INS district office.

With respect to aliens who request that their deportation hearings be in a location other than the INS district where they were served with an order to show cause, the above recommendations may help to address the notification problem. Even with the implementation of the suggested recommendations, immigration judges, who will decide cases transferred to them, may legitimately be concerned that the aliens did not receive proper notice when they have changed locations and did not appear. Such a concern could result, for example, when changed locations involve long distances across the United States. Events can happen to the aliens such as transportation or health problems that delay their arrival and cause them to miss their hearings. Accordingly, immigration judges may be reluctant to rule on aliens' cases in their absence. Therefore, we recommend that the Attorney General direct the Commissioner, INS, to (1) monitor the effect of implementing our recommendations, and

(2) if the results show that immigration judges are reluctant to rule on such cases, develop procedures, with EOIR's input, covering the circumstances for which aliens' requests to have the locations of their deportation hearings changed would be approved or denied. Such circumstances could include the basis for the aliens' requests; the use of addresses, which INS can verify; and humanitarian concerns.

Agency Comments

Justice concurred with our assessment of problems within the notification process. While Justice found the statistics on the subject of aliens' non-appearance at hearings somewhat inconclusive as they relate to the problem of notification, it noted that INS and EOIR are already undertaking joint efforts to improve the initial notification process. Justice said that our proposed alternative methods to ensure that aliens receive their initial notification will be carefully considered along with other methods developed by INS and EOIR. Justice pointed out, however, that our suggestion that Justice limit changes of venue will not be a simple or perhaps even viable solution to the notification problem. Although an alien's movement from one location to another exacerbates the notification problem, the immigration judges have limited authority to restrict the change of venue for an alien without infringing on the alien's right to due process. Justice said that it is, nonetheless, open to exploring possible limitations on changes of venue that do not unduly burden alien rights.

Justice also agrees that there are insufficient incentives to ensure that aliens appear for their hearings. It agrees that current bonding practices have not ensured the appearance of many aliens at their deportation hearings. It is considering changes to its regulations to resolve this problem, such as using full cash bonds, establishing national guidelines for bond amounts, and requiring greater coordination between EOIR and INS on issues concerning the setting of bond and the release of aliens on bond pending hearings. Justice also notes that the limited number of hearings held in absentia indicates that it is unlikely that a hearing will proceed without the alien's presence and this further diminishes incentives for an alien to appear at a hearing. Justice added that it is open to expanding the number of hearings held in absentia once it has increased the reliability of its notification process.

Beyond the fact that the posting of a bond does not ensure an alien's appearance at a deportation and exclusion hearing, Justice recognizes that certain steps in the immigration process provide, as an unintended incentive for an alien not to appear at a hearing, a delay in the process

that increases the time accumulated in the country and thereby enhances support for requesting relief from deportation. Justice is willing to consider tightening its regulations permitting aliens to make a motion to reopen when they fail to appear for hearings. Again, this will be possible only when Justice has increased the reliability of the notification process.

Legal and Administrative Factors Affect the Deportation Process

We estimated that about 59 percent of deportation cases in New York and Los Angeles have taken more than 1 year to complete, from the time the alien is apprehended to the immigration judge's decision. When appealed to BIA, about 81 percent of the cases have taken more than 2 years and at least 21 percent took more than 5 years to resolve.

The length of time to conclude a case has been affected by (1) existing law, regulations, and procedures that allow aliens to request adjournments, apply for relief, and appeal adverse decisions; and (2) the backlog of cases in EOIR awaiting disposition.

Deportation Cases Should Be Processed Expeditiously

Law and regulation establish some time limits for interim steps within the deportation process. For example, an alien has 10 days to file an appeal of a deportation order with BIA. There is no overall statutory or regulatory time frame within which the process must be completed. However, deportation cases should be processed and resolved as quickly as possible. As expressed in one judicial opinion, it can be inferred that there is:

"... a congressional mandate that deportation proceedings, while comporting with elementary values of fairness and decency, are to be accomplished with dispatch."[1]

Several major relief provisions, such as suspension of deportation and waiver of deportation, establish a time criterion for residency in the country that, if met, enable aliens to apply for relief. Therefore, the longer the deportation process takes, the better the alien's chances for obtaining relief. By prolonging the process, aliens not only satisfy the residency requirement but, during the period, may become parents or undertake other activities, the loss of which would result in hardship should they be deported. As one attorney said in his appeal of an immigration judge's decision to BIA:

"... it is precisely by prolonging the presence in the U.S. that a person is allowed to gain equities and eventually apply for other reliefs. An example of this will be the application for suspension from deportation..."

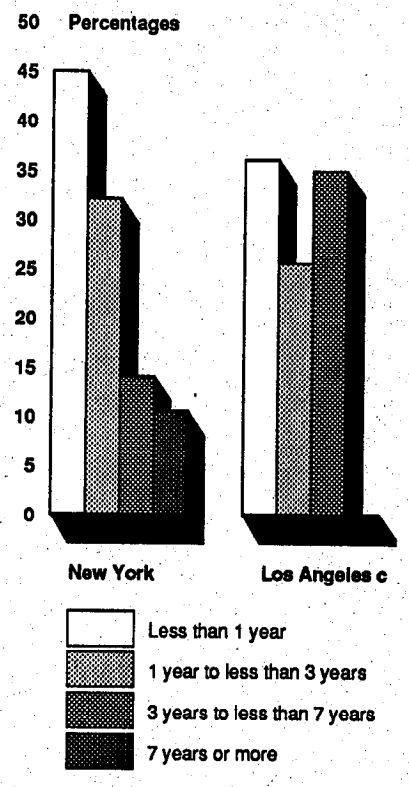
From the alien's standpoint, speedier processing of cases would benefit those aliens who have valid claims for relief from deportation. They would have the benefit of a favorable decision as soon as possible.

[1]Sang Seup Shin v. INS, 750 F.2d 122, 130 (D.C. Cir 1984).

Duration of Deportation Cases

In New York, an estimated 56 percent of 2,305 deportation cases lasted 1 year or more from the date the alien was apprehended and issued an order to show cause to the date of the immigration judge's decision. An estimated 11 percent of the cases in New York lasted more than 7 years. In Los Angeles, an estimated 62 percent of 1,724 deportation cases took 1 year or more to adjudicate. Figure 3.1 shows the duration of deportation cases.[2]

Figure 3.1: Duration of Deportation Cases Decided by Immigration Judges[a,b]



[a]Some cases began when hearings were held by INS and did not come within the jurisdiction of EOIR until it was established in 1983. Also, part of the duration of cases is attributable to INS activities (issuance of order to show cause to its filing with EOIR) and part to EOIR (receipt of order to show cause to immigration judge decision). We were unable to separate the time attributable to each activity because files did not contain data on when EOIR received the order to show cause. These two factors apply to all tables in this report regarding the duration of cases.

[b]These numbers are estimates made on the basis of our sample.

[c]The sampling errors for other than less than 7 years were so large as to make projections not meaningful. This results in a total of less than 100 percent.

[2]According to Justice, EOIR gives priority to cases in which the alien has been detained.

When immigration judge decisions are appealed, the duration of cases increases. Of the 82 New York cases appealed to BIA, 88 percent took 2 or more years to complete and 30 percent took 5 years or more. Of 33 Los Angeles cases appealed to BIA, 19 took 2 years or more to complete and 7 took 5 years or more. Table 3.1 shows the duration of appealed deportation cases.

Table 3.1: Duration of Deportation Cases Appealed to BIA

	New York		Los Angeles	
Duration of cases[a]	**Number**	**Percent**	**Number**	**Percent**
Less than 1 year	1	1	6	18
1 year to less than 2 years	9	11	5	15
2 years to less than 3 years	21	26	7	21
3 years to less than 5 years	26	32	5	15
5 years or more	25	30	7	21
Don't know	0	0	3	9
Totals	**82**	**100**	**33**	**99[b]**

[a]The duration of cases represents the time elapsed from the date of the order to show cause to the date of the final BIA decision during the period we reviewed (July 1, 1986 to June 30, 1987). Some cases had interim BIA decisions relating to reopening and remanding.

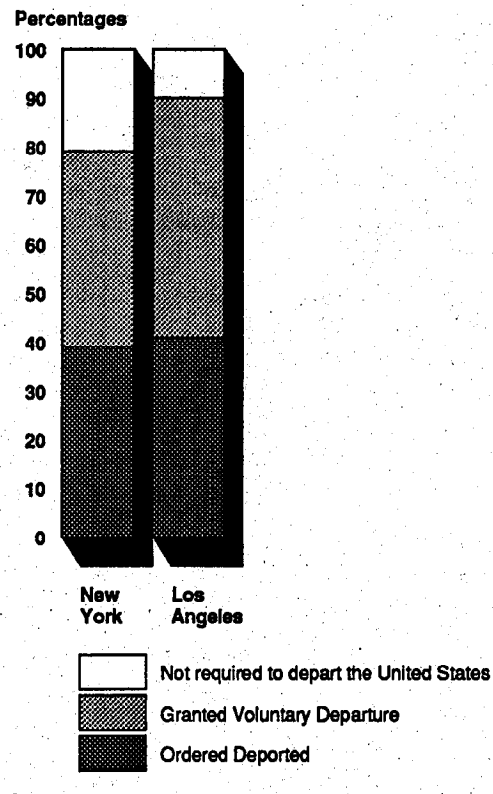
[b]Less than 100 percent due to rounding.

During the period covered by our review, 20 cases from Los Angeles appealed from BIA were decided by the federal courts. All 20 cases were decided by the Ninth Circuit Court of Appeals located in San Francisco, California. Data to calculate the length of time to complete these cases were available in 15 cases. Twelve of the 15 took 3 or more years to complete with four taking more than 5 years to complete. One of these 4 cases lasted 18 years.

Disposition of Deportation Cases

The majority of aliens who completed deportation proceedings at both the immigration judge level and the BIA level were ordered to leave the country. In New York, an estimated 79 percent of 2,305 aliens were ordered deported or granted voluntary departure by immigration judges. The remaining 21 percent were not required to depart the country because they were granted relief from deportation, such as adjustment of status, or their cases were remanded to the INS district director for action. In Los Angeles, we estimated that 89 percent of 1,724 aliens were ordered deported or granted voluntary departure, while 11 percent were not required to depart. Figure 3.2 shows the disposition of deportation cases.

Figure 3.2: Disposition of Deportation Cases by Immigration Judges[a]



[a]These percentages are estimates made on the basis of our sample.

Appeals to BIA usually involve cases in which aliens are appealing immigration judges' orders to leave the country, either by deportation or voluntary departure. A small number of appeals are made by INS, usually to contest relief granted by the immigration judge. Table 3.2 indicates that BIA upheld the decisions of immigration judges in the majority of cases.

Table 3.2: Disposition of Deportation Cases Appealed to BIA

Location	Total Appealed to BIA	Appeals withdrawn	BIA decision	
			Upheld	Reversed and other[a]
New York	82	11	53	18
Los Angeles	33	1	20	12

[a]Other cases include mainly cases remanded to immigration judges. According to Justice, reversed and remanded cases take additional time to process.

Factors Affecting the Duration of Deportation Cases

The length of time it takes to process a deportation case is a result of

- aliens exercising their rights to request adjournments of hearings, apply for relief, and appeal adverse decisions; and
- the backlog of cases in EOIR.

Hearing Adjournments

Adjournments prolong a case because the hearing must stop and be rescheduled so that the purpose of the adjournment can be accomplished. We estimated that most deportation cases—85 percent in New York and 81 percent in Los Angeles—were adjourned at least once. In New York, 20 percent of the cases had more than five adjournments, and in Los Angeles, 8 percent had more than five adjournments.

We were unable to determine from the files the reasons for each adjournment. Where information was available, it appears that adjournments were usually granted to:

- allow the alien time to obtain representation,
- allow the alien to file an application for relief from deportation,
- await a State Department opinion on an asylum application,
- allow the alien's attorney to prepare the case, and
- obtain an interpreter.

Some cases were adjourned because the aliens failed to appear for their hearings.

Applications for Relief

Of the sample in New York, 57 of 97 aliens (59 percent) filed applications (for relief from deportation)[3] to remain in the United States, while in our Los Angeles sample, 39 of 97 (40 percent) did so. In New York, aliens filed 3 or more applications 21 percent of the time.

Most of the aliens in New York and Los Angeles who filed applications for relief requested asylum. In New York and Los Angeles, 41 of 57 aliens (72 percent) and 34 of 39 (87 percent), respectively, filed asylum applications with an immigration judge. Table 3.3 lists the predominant types of applications filed.

[3]See appendix I for a discussion of applications for relief.

Table 3.3: Applications for Relief Filed With Immigration Judges

Type of application	New York		Los Angeles	
	Number	Percent	Number	Percent
Asylum[a]	43	43	34	74
Adjustment of status	21	21	0	0
Permanent residency	10	10	3	7
Suspension of deportation	6	6	3	7
Waiver of excludability	4	4	0	0
Registry	4	4	1	2
Other	12	12	5	11
Totals	**100[b]**	**100**	**46**	**101[c]**

[a]Some aliens applied for asylum more than once.

[b]A total of 113 applications were filed in New York. Our total equals 100 because we did not record details on cases in which aliens filed more than 5 applications.

[c]Exceeds 100 percent due to rounding.

Cases in which aliens applied for relief generally took about five times longer to conclude than cases in which no applications were made. This is because additional appearances may be needed to present evidence, to await an immigration judge's ruling on an application, or to obtain a State Department advisory opinion on asylum. We estimated that in New York, about one-half of the cases in which aliens applied for relief lasted more than 829 days, while half of the cases in which aliens did not apply for relief lasted less than 156 days. We estimated that in Los Angeles, half of the cases lasted more than 974 days when relief was applied for, and half lasted less than 209 days when no relief was applied for. In May 1989, the Chief Immigration Judge said that cases involving relief from deportation were taking substantially less time to complete (80 percent less in Los Angeles and 12 to 25 percent less in New York).

The number of aliens in our review who applied for relief is probably lower than normal. This is because the time period from which our case samples were drawn covered part of the period during which aliens could apply for legalization under IRCA (May 1987 to May 1988). For example, during the period covered by our review in New York, an estimated 1,012 of 6,501 deportation cases (16 percent) were administratively closed by EOIR because aliens indicated to immigration judges that they were going to apply for legalization.

Aliens could apply for legalization if they had been in the United States illegally since before January 1, 1982. Accordingly, it appears that many

of the aliens in the period covered by our review, who applied for legalization, had been in the country for about 5 years or more at the time they appeared at a deportation hearing. These aliens might have been eligible for and claimed some type of relief from deportation (such as suspension of deportation, waiver of deportation, or adjustment of status) if legalization were not available.

The Chief Immigration Judge told us that he expects to see increasing numbers of aliens claiming suspension of deportation in 1989, mainly aliens who were denied legalization under IRCA. As of January 1, 1989, these aliens will have accumulated the requisite 7 years residence in the United States, which is the primary eligibility criterion for this type of relief.

Asylum was the major type of relief applied for by aliens in New York and Los Angeles but few applications were granted. We estimated that in New York, 42 percent of the aliens in deportation proceedings (an estimated 974 aliens) requested asylum. In Los Angeles, 35 percent (an estimated 604 aliens) did so.

Appeals

After the immigration judge issues the case decision, the alien has 10 days from receiving the decision to file a notice of appeal to BIA.[4]

Appeals to BIA generally added at least 1 year to the duration of deportation cases. We estimate that in New York, 149 cases (89 percent of the cases appealed) were not decided by BIA until more than 1 year after the appeals were filed. In Los Angeles, 20 cases (61 percent of the cases appealed) took more than 1 year to decide after the appeals were filed.

Generally when a case is appealed, the local EOIR office forwards to BIA the record of proceeding file, which includes the immigration judge's decision, appeal form, transcript, briefs, exhibits, and other case-related material. At BIA, case files are processed, reviewed by an examiner, and assigned to a staff attorney for further review. Staff attorneys draft the proposed order (decision) for review by the five BIA members.

Once BIA receives the record of proceeding, it usually renders a decision within about 6 months. Much of the time consumed in the BIA appeals

[4]Although INS appeals cases to BIA, most appeals are made by aliens. Of the cases we reviewed, we estimated that 96 percent of the appealed New York cases and 94 percent of the appealed Los Angeles cases were appealed by aliens.

process is attributable to the time involved in obtaining the record of deportation proceedings. This appears to be due primarily to difficulties in EOIR promptly requesting transcripts from its contractor. Before BIA can begin reviewing an appeal, the audiotape record of the deportation hearing needs to be transcribed. EOIR field offices forward all tapes to the Office of the Chief Immigration Judge in Falls Church, Virginia, where they are maintained until they are sent to the transcription contractor for typing. The typed transcripts are returned to the immigration judges for review and correction, if necessary. Final versions are provided to the INS trial attorney and the alien or the alien's representative for review and use in brief preparation. The immigration judge sets the time period for submitting briefs. Upon expiration of that time, INS and the aliens' legal representatives are provided a copy of each other's briefs, if any, and each party has 10 days to prepare and submit a rebuttal brief. When all briefs have been received, or when the time allowed by the immigration judge to file briefs expires, the record of proceedings is forwarded to BIA.

In New York, for 75 cases in which data were available, half of the cases took more than 480 days to complete and forward the record of proceedings to BIA. Although we were unable to specifically identify how much of that time was needed to prepare transcripts, the Chief Immigration Judge said that transcription was a problem during 1987 and 1988, the time period covered by our review. He added that finances limited his office to about 4,000 to 6,000 pages per week and it was not unusual during that period to have taken up to 9 months to type a transcript. A new contractor was selected for fiscal year 1989, with EOIR deciding to spend more on transcripts and increasing the weekly maximum to 10,000 pages. In March 1989, the Chief Immigration Judge told us that transcripts were being typed promptly.

BIA decisions appealed to the Federal courts generally add more than 1 year to the duration of a case. Of the 20 cases appealed to the Ninth Circuit Court of Appeals, 80 percent were decided more than 1 year after the appeal was filed, and 35 percent were decided more than 2 years after the filing of the appeal.

Staff attorneys at the Court of Appeals for the Ninth Circuit told us that appeals are usually lengthy because briefs required for these cases take time to prepare, agency records are not always received quickly, and internal court procedures hamper quick case resolution. The staff attorneys told us that aliens use their right to file appeals as a tool to remain in the country. They stated that many appeals they review are poorly

prepared, which they believe indicates that the aliens are not overly concerned about the outcomes of their cases. They added that some aliens take advantage of the lengthy time the courts take to issue a decision. For example, in one case an alien couple absconded after the wife had been ordered deported in 1970. INS reapprehended the couple in 1982, whereupon the couple began to file three consecutive motions to reopen the case. Each motion was, in turn, denied by an immigration judge, rejected by BIA, and dismissed by the courts. However, the elapsed time from the filing of the first motion to the Court of Appeals' third decision was almost 5 years.

Case Backlogs in EOIR

The backlog of cases in EOIR contributed to the length of time needed to resolve deportation cases. As of March 1989, the Chief Immigration Judge said that the immigration judges' backlog generally had been cleared. However, a backlog of appeal cases remained at BIA.

In 1984, EOIR inherited the backlog of cases pending before the special inquiry officers of INS. This backlog was estimated to be at least 56,000 cases. However, according to an EOIR official, EOIR did not know specifically how many cases were pending. Older cases were being rediscovered while new cases were being received, adding to the backlog. The Chief Immigration Judge told us that during this period he temporarily reassigned judges from courts without backlogs to courts with backlogs, such as Los Angeles, to alleviate the problem. He said that as of April 1989, there was no backlog and that his goal was to have cases take no longer than 5 months from the first hearing to the immigration judge's decision.

Discussions with INS representatives in the districts we visited indicated that backlogs may be starting in some locations. For example, INS representatives in New York said that orders to show cause issued in May 1989 were not being scheduled for a first hearing for 3 months. Similarly, INS representatives in Miami stated that 4 to 5 months elapse until the first hearing was taking place. However, INS San Diego District Office representatives told us that the first hearing was being held within 2 weeks of the issuance of the order to show cause, while El Paso officials told us that the first hearing was taking place in 6 to 8 weeks. In May 1989, the Chief Immigration Judge told us that backlogs were building in New York, Miami, and Los Angeles. He attributed this to an increased number of asylum applications generated by an unusually large influx of Central Americans who requested hearings in those locations. Also, he temporarily detailed immigration judges to INS' Harlingen District to

handle an increased number of Central Americans' asylum cases. Further, he also assigned immigration judges to BIA to help dispose of its backlog of appeal cases.

The backlog of cases persists at BIA. As of October 1, 1988, BIA had 7,901 cases pending.[5] As immigration judges reduced their backlogs by completing more cases, BIA's caseload and backlog increased because the number of appeals from immigration judges' decisions increased. At the beginning of fiscal year 1985, BIA had a backlog of 1,247 cases and received 4,911 new cases during that year. In fiscal year 1988, BIA received 10,191 new cases to add to a beginning-of-the-year backlog of 5,578. Additionally, according to the Chief Immigration Judge, as EOIR is able to procure transcripts more quickly than in the past, more cases will be available for BIA to hear.

In July 1988, in an effort to reduce the backlog, BIA established a temporary second board to decide cases. Each board is made up of two regular board members supplemented by an immigration judge, who is assigned temporarily as an acting board member.

Aliens Obtain Legal Status After Being Ordered to Depart

Even when aliens were ordered deported or granted voluntary departure, legal and procedural mechanisms permitted them to remain in, or return to, the United States.

As previously discussed, deportation cases often take several years or more to resolve. Throughout this period, circumstances can change in the aliens' favor, establishing grounds by which they may obtain legal status. In some instances, legal status was achieved while the alien was still in the United States; in other cases, the alien left the country but returned legally as a result of actions to obtain legal status.

In 22 of 82 New York cases that were appealed to BIA and in which aliens were ordered deported or granted voluntary departure, the aliens either continued to pursue, and successfully obtained, legal status while remaining in the United States or departed the country and legally reentered. In some cases, this happened even though BIA upheld the immigration judge's order for the alien to depart the country. This can occur

[5]These cases also include appeals from visa petitions and other matters not involving immigration judge decisions.

because alternatives may be pursued simultaneously to obtain legal status on the alien's behalf. The following examples illustrate these occurrences.

An alien arrived in the United States in July 1983 and was issued an order to show cause in July 1984. An immigration judge granted voluntary departure in July 1985, which the alien appealed to BIA. Within a few weeks of the immigration judge's decision, a petition for adjustment of status on the basis of occupational preference was filed on behalf of the alien. BIA upheld the immigration judge's decision in January 1987. The alien departed in April 1987 and was granted legal permanent resident status later on the basis of the petition filed before the appeal to BIA.

An alien was issued an order to show cause in June 1981 and was granted voluntary departure by the immigration judge in June 1984. The alien appealed to BIA in July 1984. BIA upheld the immigration judge's decision of voluntary departure in September 1986. However, the alien had his status adjusted to legal immigrant in October 1985, while the case was still in process before BIA.

An alien arrived in the United States in September 1960 and was issued an order to show cause on November 1961. Almost 20 years later, in February 1981, an immigration judge ordered the alien deported. In August 1981, the alien filed a motion to reconsider, but for reasons unknown, INS did not forward it to BIA until May 1987. It was not accepted by BIA because the time for appeal had expired. In June 1987, the alien filed a motion to reopen the case with BIA. BIA remanded the case to an immigration judge who, in November 1987, ordered the granting of the alien's application.[6] This was made possible by the enactment of IRCA on November 6, 1986, which changed the registry date from June 30, 1948, to January 1, 1972.

No Assurance That Aliens Ordered to Depart Do So

Aliens who are ordered deported or granted voluntary departure can remain in the United States illegally. This occurs after they admit their deportability and spend years in proceedings attempting to gain relief to remain here legally. Throughout this process, INS expends resources to challenge the alien's claims for relief and even if successful, there are no

[6]Relief from deportation on the basis that entry was made before January 1, 1972. (See app. I for discussion of registry.)

assurances that aliens depart as required. Further, INS does not pursue aliens who fail to depart, mainly because of limited resources.

An immigration judge's order of deportation becomes final when (1) the alien waives an appeal, (2) the time allotted for an appeal expires and no appeal is made, or (3) BIA dismisses an appeal. When immigration judges grant voluntary departure, they usually issue an alternate order of deportation, which automatically takes effect if the alien has not departed by the time specified.

Removal procedures differ depending on whether an alien is ordered deported or granted voluntary departure. In neither case however, does INS physically remove most aliens who are ordered to depart. Rather, INS depends on aliens to surrender or leave the country on their own. Unless they are detained at the time they are to be removed from the country, aliens can ignore the order to depart and remain here illegally.

When an order of deportation becomes final, the INS district director is to issue a warrant of deportation. A deportation officer is to enter the warrant into the alien's file and then should contact the district office travel branch to arrange for the alien's travel. The officer is to send the alien two forms. One states that the alien has been ordered deported to a specified country and warns that any unauthorized reentry within 5 years is a felony. The other form indicates the specific travel arrangements and the place and time at which the alien is to surrender for deportation. These notices are to be sent by certified mail, return receipt requested, to the alien, the alien's representative, and the bond obligor, if any. If the alien does not surrender when specified INS can declare the bond, if any, breached and the investigations branch is to be asked to locate the alien.

In voluntary departure cases, a deportation officer monitors the date by which the alien was to have departed. Unless the officer receives information indicating departure, such as a copy of an airline ticket, the officer assumes the alien did not depart, issues a warrant of deportation, and proceeds as in a deportation case.

INS does not keep statistics on the number of aliens who do not surrender for deportation or fail to depart as ordered. However, a 1984 nationwide INS study found that 76 percent of aliens ordered to surrender for deportation failed to do so. Additionally, INS reported that as of September 30, 1987, the whereabouts of 56,000 aliens in the deportation process were unknown. This includes aliens who had been ordered to leave

the country but may not have done so, as well as aliens who have failed to appear for hearings.

Our analysis of the sampled cases showed that alien noncompliance with deportation has continued. We estimate that in New York, of the approximately 1,307 aliens who did not appeal the immigration judge's deportation order, there was no evidence of departure for 642 of the 1,307 (49 percent). In Los Angeles, of the 1,368 aliens who did not appeal the judge's deportation order, there was no evidence of departure for 888 (65 percent).[7]

In addition, we found little evidence that the district offices investigations branches were requested to locate aliens for whom no evidence of departure existed. While not projectable, of the 27 aliens in New York who were not in custody and for whom there was no evidence of departure, the investigations branch was contacted in 1 case, which did not show evidence of departure. In Los Angeles, there was no evidence that the investigations branch was contacted in any cases.

Nationally, the situation appears similar to that in New York and Los Angeles. In fiscal year 1987, 5,082 investigations were requested, 2,880 actually were undertaken, and 603 were completed. A total of 253 aliens were apprehended and deported. INS representatives in the districts we visited told us they do not generally request or undertake investigations to locate aliens who fail to depart unless the alien has been convicted of a crime.

Conclusions

The passage of the Immigration and Nationality Act of 1952 occurred when the illegal flow of aliens into this country was not a major problem. Since then, however, the flow has become a torrent. INS apprehensions of aliens illegally entering the country have risen from 45,000 in 1959 to 1.2 million in 1987, reaching a peak of 1.8 million in 1986.

The existing process to deport aliens is not working well. Aliens violate our laws by entering the country illegally, not complying with conditions of legal entry, or not attending their deportation hearings, but they suffer no consequences. Just like aliens who comply with our laws, these aliens are entitled to apply for relief from deportation on the bases of

[7]About 9 percent of these aliens in New York and 4 percent in Los Angeles were from countries whose aliens had been granted extended voluntary departure or were otherwise not being deported during the period of our review (Haiti, Cuba, Nicaragua, Poland, Ethiopia, and Afghanistan).

the act's provisions. Therefore, they have little incentive to comply with our immigration laws. Further, aliens continue to accumulate time and reasons, such as establishing a family, to support their relief claims even after INS has started the deportation process against them. Several INA provisions establish the time criterion that, if met, can support a claim for relief. Compounding the problem is INS' resource constraints. Given those constraints INS has not been able to effectively carry out its responsibilities, which include apprehending aliens here illegally, detaining those aliens whom it apprehends, pursuing aliens who fail to appear for hearings or abscond after being ordered to depart, or ensuring their removal when ordered to depart.

Finding solutions to this complex problem is difficult and is inextricably related to the issue of how Congress wants to enforce our immigration laws. Congressional intent with regard to major aspects of immigration policy was clarified greatly with passage of IRCA. But even then, there was not an overall consensus on just how far enforcement actions should go. It has been extremely difficult to forge consensus on immigration issues taking into account (1) the rights and safeguards grounded in our Constitution, which includes protecting the rights of aliens; (2) the need for secure borders to control whom we, as a nation, allow to enter and remain here; and (3) humanitarian concerns. Moreover, a major restructuring of the existing system—such as the repeal of most relief provisions and the massive detention of all apprehended aliens—may be politically sensitive or economically impracticable.

Consequently, we believe the best process for deciding the extent to which, if at all, major statutory changes in the deportation area are needed is through hearings held by the Judiciary Committees. In the interim, our recommended changes in chapter 2 and the following legislative proposals, combined with the Immigration Marriage Fraud Amendments and IRCA's potential for deterring illegal immigration, should start to improve the Nation's deportation process.

Recommendations to Congress

The length of time aliens have spent in the country, which can be used to support their claims for relief, continues to build even after the hearing process has started. Accordingly, we recommend that Congress amend the INA to preclude aliens from accumulating time toward relief from deportation after INS has served them with an order to show cause.

Under existing laws, aliens who have entered the country illegally or violated the conditions of their legal entry can claim relief from deportation. Therefore, we recommend that Congress amend the INA to preclude aliens who fail to appear at a scheduled hearing for which they received proper notification from using the act's existing relief provisions. While aliens would be allowed on motion to reopen their cases, the motion would be limited to explaining the reasons for their failure to appear. Such a change should consider the political situation in the aliens' countries of origin so that they would not be deported into a life-threatening situation.

Agency Comments

Justice agreed that our report generally reflects the timeliness of the deportation process.[8] Justice pointed out that both the complexity of the process and the desire of aliens to prolong it contribute to the processing times. However, Justice also noted that the due process protections provided by the Constitution or statute cannot be circumscribed by direct Justice action; thus, Justice is limited in its ability to accelerate the deportation process when it is slowed by these protections. Justice said that to the extent that due process protections are provided by Justice regulations, it will review its regulations to determine whether modifications are possible that would make the procedures more efficient without violating due process.

As to the time factors over which the Department has control, Justice believes that the EOIR Automated Nationwide System of Immigration Review will eventually demonstrate major improvements in the process since the period subject to our review. The full implementation of this system, a comprehensive data base case tracking system for all cases, was achieved in 1988. According to Justice, this system not only contains all relevant case information and identifies all upcoming and overdue actions by dates, including the need to schedule hearings, but also allows a case to be electronically transferred from one field office to another for both case information transport and recordkeeping purposes. This development should significantly enhance Justice's ability to ensure more timely processing of such cases. Since this system became effective in 1988, which is after the period covered in our review, we have not evaluated it.

Justice said it would generally favor legislative modifications to curtail the incentives for aliens not to appear, preclude relief from deportation,

[8]Justice's comments also apply to the exclusion process which is discussed in chapter 4.

and stop the accumulation of time towards relief. However, Justice added, these modifications, while solving some of the problems in the present deportation process, must also assure due process for each alien. Both INS and EOIR are attempting to determine the impact of our proposed changes to both increased effectiveness of the process and increased administrative requirements. They will review their findings, suggest specific legislative proposals consistent with their findings, and coordinate any proposals with appropriate Justice officials.

Processing Times Are Faster for Exclusion Cases

On the basis of our sample, we found that exclusion cases generally are completed more rapidly than deportation cases. The majority of exclusion cases were adjudicated within 1 month of the time the alien was apprehended to the immigration judge's decision. In New York, cases appealed to BIA usually took more than 3 years to resolve.

On the basis of our analysis in New York and Los Angeles, more than half of the cases were completed within 6 months. When immigration judges' decisions were appealed to BIA, 75 percent of the New York cases took 3 or more years. In Los Angeles, not enough cases were appealed to BIA to make meaningful projections.

Exclusion cases generally may not be as prolonged as deportation cases because

- the burden of proof for admission into the United States is on the alien;
- excludable aliens are detained more frequently than are deportable aliens and, as a result, their cases are given priority for hearings; and
- exclusion cases generally involve fewer issues since they are based on the aliens' circumstances at the time of entry. In other words, the aliens have not spent enough time in the United States to establish ties and bases to request relief from deportation.

As with the deportation process, there is no criterion for how long the exclusion process should take. In some respects, expeditious processing of exclusion cases is more desirable than it is for deportation cases. Many aliens in exclusion proceedings are detained pending resolution of their cases, either at an INS facility or a contract facility, which is costly.

The detained aliens have not broken any laws, unlike aliens who have been found to have entered the country illegally or overstayed their visas. These aliens presented themselves to INS for inspection, while aliens who entered illegally did not.

During fiscal year 1987, INS estimated that 196 million aliens underwent primary immigration inspection at ports of entry. About 728,000 of them decided to return home when denied admission to the United States, but 7,113 others requested a hearing before an immigration judge.

Duration of Exclusion Cases

We estimated that in New York, about 84 percent of the 2,081 exclusion cases were decided by an immigration judge within 6 months of the alien being placed into proceedings (see table 4.1). In Los Angeles, 54 percent of 26 cases were completed within 6 months.

Table 4.1: Duration of Exclusion Cases Decided by Immigration Judges

	New York[a]		Los Angeles	
Duration of case	**Number**	**Percent**	**Number**	**Percent**
Same day to 31 days	1,480	71	8	31
32 days to 6 months	279	13	6	23
More than 6 months to less than 3 years	257	12	7	27
3 years or more	[b]	[b]	4	15
Don't know	•	•	1	4
Totals	**2,016**	**96[b]**	**26**	**100**

[a]These numbers are estimates made on the basis of our sample.

[b]The sampling errors for this number were so large as to make a projection not meaningful. This resulted in a total of less than 100 percent.

The point in time at which aliens were placed into proceedings differed between New York and Los Angeles because of different procedures. In New York, the decision to place an alien in exclusion proceedings is generally made by INS inspectors at the port of entry. INS issues a Form I-122 (Notice to Applicant for Admission, Detained/Deferred For Hearing Before an Immigration Judge), which notifies the alien of INS' intent to exclude. In Los Angeles, potentially excludable aliens are instructed to report or brought to the INS district office for inspection. In New York, about 92 percent (1,909) of the aliens were served with Form I-122 on the day of arrival, with no alien being served more than 26 days after arrival. In Los Angeles, only 12 percent (3) of the aliens were served on the day of arrival, while 50 percent (13) were served within 14 days, and 26 percent (7) from 3 months to 14 years. We were unable to determine a time frame for 12 percent (3) of the cases.

INS Miami District officials said that their exclusion cases take longer to complete than such cases in New York or Los Angeles because the Miami cases involved Haitians and Cubans. Special provisions apply to them regarding their exclusion. (See section on Appeals.)

As with deportation cases, when aliens appeal exclusion decisions of immigration judges to BIA, the time to complete cases increases. As shown in table 4.2, of the 53 New York cases appealed to BIA, 76 percent took 4 years or more to complete.

Table 4.2: Duration of Exclusion Cases Appealed to BIA

	New York		Los Angeles	
Length of cases	**Number**	**Percent**	**Number**	**Percent**
Less than 1 year	4	7	1	20
1 but less than 4 years	9	17	2	40
4 but less than 5 years	12	23	•	•
5 years or more	28	53	1	20
Don't know	•	•	1	20
Totals	**53**	**100**	**5**	**100**

Disposition of Exclusion Cases

The majority of aliens who completed exclusion proceedings were ordered excluded and deported or were permitted to withdraw from proceedings (similar to being granted voluntary departure in deportation). Table 4.3 shows our estimate that in New York, 86 percent of 2,081 aliens were ordered excluded and deported or were permitted to withdraw. The remaining 14 percent were granted entry into the United States either temporarily for business, pleasure, or asylum, or permanently because evidence disclosed that they were legal permanent residents or citizens. In Los Angeles, 50 percent of 26 aliens were ordered deported and excluded or were permitted to withdraw, and 50 percent were admitted.

Table 4.3: Disposition of Exclusion Cases by Immigration Judges

	New York[a]		Los Angeles	
Case disposition	**Number**	**Percent**	**Number**	**Percent**
Ordered excluded and deported	987	48	8	31
Permitted to withdraw	794	38	5	19
Granted entry	300	14	13	50
Totals	**2,081**	**100**	**26**	**100**

[a]These numbers are estimates made on the basis of our sample.

Appeals to BIA usually involved cases in which aliens were appealing immigration judges' decisions not to admit them into the United States. A small number of appeals were made by INS, usually to contest the alien's admittance into the United States. Table 4.4 shows that BIA upheld the decisions of immigration judges in the majority of cases.

Table 4.4: Disposition of Exclusion Cases Appealed to BIA

Location	Total appealed to BIA	Appeals withdrawn	BIA decision	
			Upheld	Reversed and other
New York	53	6	35	12
Los Angeles	5	1	2	2

Factors Affecting the Duration of Exclusion Cases

The INA and regulations provide aliens in exclusion proceedings with due process requirements similar to those provided in deportation proceedings. However, it appears that the circumstances of aliens in exclusion proceedings affect the time frame within which their cases are completed.

Unlike deportation cases, in exclusion cases the burden of proof (to be admitted into the country) is on the alien. Further, EOIR policy gives priority in scheduling hearings to aliens who are detained. Aliens in exclusion proceedings are detained more frequently than are deportable aliens. For example, we estimated that in New York, 55 percent of aliens in exclusion proceedings were detained, while 8 percent of aliens in deportation proceedings were detained.

Unlike deportable aliens who have spent some time in the United States, aliens who are seeking admission generally have less of a basis to support claims of relief. This usually results in quicker case dispositions. For example, we estimated that in New York, only 8 percent of the excludable aliens filed applications for relief; most were for asylum.

Appeals

Appeals to BIA generally added at least 1 year to the duration of exclusion cases. In New York, 48 cases (91 percent of the appeals decided) were not decided by BIA until more than 1 year after the appeals were filed and 28 cases (53 percent) were not decided until more than 2 years after the appeal was filed. In Los Angeles, 1 case (20 percent of the appeals decided) took more than 1 year to decide after the appeal was filed.

According to the Assistant District Director for Detention and Deportation in New York, the length of these cases is attributable in part to the fact that the United States was not deporting aliens from certain countries, such as Cuba and Haiti. In New York, 31 of 53 cases (58 percent) involved Haitians most of whom had been in exclusion proceedings for 4 to 5 years. In the early 1980s, many Haitians departed Haiti by boat and

headed for the United States, and were apprehended at sea and placed in exclusion proceedings. INS policy changed during this period. Sometimes, Haitians were placed in detention, while at other times they were paroled[1] into the country. Also, several court actions were brought against INS by groups representing Haitians. As a result, the exclusion cases against these aliens were delayed throughout this period. According to the Assistant District Director for Detention and Deportation in New York, for several years no proceedings were held for Haitians, which may explain the length of such cases in our review.

Regardless of the length of time these cases took, the final outcomes were not much different from those in BIA deportation cases in which the immigration judges' decision ordering the alien to depart the country was upheld by BIA. In 35 New York cases, BIA upheld the immigration judge's decision ordering the alien removed from the United States. Haitians represented 27 (77 percent) of these cases. Although in these 35 cases BIA upheld the immigration judge, 13 aliens did not leave the country because they were granted legal permanent resident status.

[1]Excludable aliens temporarily admitted into the United States for emergency reasons or when in the public interest.

The Exclusion and Deportation Processes

Aliens whom INS bars from entering the United States but who wish to be admitted are placed into the exclusion process. Aliens in the United States whom INS wants to remove are placed into the deportation process. These processes begin with an alien's apprehension and end with either their removal from the country or a judgment of eligibility to remain. They are characterized by several major elements. Chief among these is a hearing to determine the alien's excludability or deportability. Aliens and INS may also file motions to reopen cases or reconsider decisions. Additionally, aliens may request that exclusion be waived or may file for relief (exemption) from deportation under numerous provisions of law and may appeal decisions through BIA and the federal courts.

Hearings

Exclusion and deportation hearings are administrative as opposed to criminal in nature, and both provide the alien with the basic requirements of due process.

Aliens in this country are considered persons protected by the Fifth Amendment's due process clause.[1] As such, they are entitled to procedural due process regarding their potential deportation. Conversely, due process is not constitutionally required for aliens who appear to be inadmissible into the United States, and therefore, few restrictions exist on the type of procedures Congress can establish to exclude them. However, the INA and Justice's implementing regulations established due process procedures for excludable aliens similar to those established for deportable aliens. Under these procedures, the aliens have the right to

- be represented by counsel (at no expense to the government);
- be informed of the nature, purpose, time, and place of the hearing;
- present evidence and witnesses in their own behalf;
- examine and object to evidence against them;
- cross-examine witnesses presented by the government;
- request the immigration judge to issue subpoenas requiring attendance of witnesses and/or the production of documentary evidence; and
- appeal decisions of the immigration judge to BIA and the federal courts.

While both types of hearings are carried out in a similar manner, exclusion hearings are generally closed to the public, whereas deportation hearings are not.

[1]The fifth amendment states, "No person shall be ... deprived of life, liberty, or property, without due process of law."

At either hearing, the judge informs the alien of the nature and purpose of the hearing and advises the alien of his or her rights, including the privilege of being represented by counsel. The judge also advises the alien of the availability of free legal service programs, which are not provided by the government, and ensures that the alien has been given a list of such programs.

INS presents evidence and examines and cross-examines the alien and witnesses. The judge regulates the overall course of the hearing, administers oaths, receives all evidence, rules upon objections, and questions witnesses. The judge may adjourn the hearing and set a date for its continuance for various reasons, such as allowing the alien time to obtain counsel or to file an application for relief.

At the conclusion of the hearing, the judge renders a decision, either orally or in writing. Essentially, the decision will be to order the alien deported or excluded, grant the alien relief from deportation or exclusion, or terminate the hearing. The judge also advises aliens of their rights to appeal adverse decisions. Hearings are recorded verbatim, and a record of proceedings containing all evidence, testimony, and other pertinent material is maintained.

Aliens and INS may appeal decisions to BIA. BIA's review is based on the record of the hearing. Legal briefs may be filed, and BIA may also permit oral arguments.

Post-Hearing Motions

Aside from appealing decisions, aliens or INS may file various motions subsequent to hearings or BIA proceedings. The purpose of these motions is to have the case reviewed. Denial of the motions may be appealed to BIA and the courts.

Motion to Reopen

The alien may request reopening a case because circumstances might have changed since the deportation order, such as a change in a foreign government that might affect an alien's previously denied claim for asylum. The alien must show that there are new and material facts that were not available at the previous hearing and the motion must be supported by affidavits or other evidence. INS may also file motions to reopen.

Motions to reopen that are denied by EOIR and BIA may be appealed to the courts. A motion to reopen does not automatically stay the execution of a deportation order. The INA does not provide for motions to reopen.

Rather, the reopening procedure was developed by the Attorney General, through regulation.

Motion to Reconsider

A motion to reconsider is a request by the alien that the judge reexamine a decision because of a change in the law or in its interpretation, or because some aspect of the case was overlooked in the previous proceeding. A motion to reconsider does not result in an automatic stay of deportation. INS may also request reconsideration of a decision.

Motion to Remand

New circumstances may occur while an appeal is pending. The alien or INS may request that the case be referred back to the previous level of adjudication because of the changed circumstances. As with a motion to reopen, the motion to remand must contain new evidence.

The Exclusion Process

Aliens arriving at ports of entry must undergo INS inspection. During the primary inspection phase, INS inspectors check each alien's entry documents[2] to determine if they are valid and if aliens are entitled to enter in the status in which they are seeking entry; for example, visitor. They also ask questions aimed at determining whether the aliens are likely to overstay their visas, plan to work in the country, and have sufficient money to support their stay. The inspector may also check the alien's name against an INS data base that contains names and other information on individuals who should be denied entry into the United States. At the conclusion of the primary inspection, the inspector may admit the alien. If the alien cannot establish that he or she is admissible, a secondary inspection takes place. This may involve further questioning, the taking of a sworn statement, a search of the alien's personal effects, and a medical examination.

Aliens who appear to be excludable may be permitted to withdraw their application for admission and leave the country voluntarily. INS reported that in fiscal year 1987, about 264,000 aliens withdrew during primary inspection and another 465,000 withdrew during secondary inspection. Aliens who do not withdraw voluntarily or whom INS does not permit to withdraw are entitled to an exclusion hearing. There were about 7,000 such hearings in fiscal year 1987. Until the hearing, the

[2]Generally, immigrants must present a valid immigrant visa or other entry document and a passport; nonimmigrants must present a valid nonimmigrant visa and a passport or a border crossing identification card. Immigrants entering to perform labor must present a labor certification from the Secretary of Labor.

alien may be detained by INS or paroled into the United States with or without the posting of a bond.[3]

At the exclusion hearing, the burden of proving admissibility rests with the alien. An alien may also request a waiver of excludability on the basis of any one of the grounds described in the following sections.

The immigration judge may rule on waivers of excludability. If the waiver is granted and the alien is otherwise admissible, the alien is admitted into the country. If the waiver is not granted or the judge rules the alien excludable, the alien must either leave the country or appeal the judge's decision to BIA.[4] Pending an appeal or departure, the alien may be detained or paroled. Generally, aliens awaiting departure are detained. Aliens wishing to appeal their exclusions to BIA have 10 days to file a notice of appeal.

If BIA upholds the immigration judge's decision to exclude the alien, the alien can appeal BIA's decision to U.S. District Court under a habeas corpus proceeding.[5] Under this proceeding, the court's review is limited to determining whether the government followed established procedures; for example, that a fair hearing was held, INS abided by its own regulations, and the judge's decision is supported by the record. The alien or INS may appeal an adverse district court decision to the U.S. Circuit Court of Appeals and ultimately to the U.S. Supreme Court.

When all appeals are exhausted and the alien is still found to be excludable, INS arranges for the alien's removal from the country.

Waivers of Excludability

Aliens who are excludable may have their grounds for excludability waived and gain entry to the country as either immigrants or nonimmigrants. Generally, to obtain a waiver, the aliens must (1) show that they meet the conditions of one of the approximately 20 waiver provisions stated in the law, and (2) obtain a favorable decision by the Attorney

[3]Parole allows an excludable alien to be admitted into the United States for a temporary period, when in the public interest, or for emergency reasons such as urgent medical care. Paroled aliens have not made an official entry and are considered to be "at the border" despite being permitted to travel in the United States.

[4]In some limited circumstances, immigration judges may allow aliens to withdraw their applications for admission and leave the country.

[5]A writ to bring a person in custody before the court to determine the legality of the custody.

General acting through INS or EOIR.[6] For some waivers, a recommendation by the Secretary of State is also required.

Of the approximately 20 waiver provisions in the INA, two provide broad coverage and permit the Attorney General to waive almost all grounds for exclusion. These provisions apply to (1) any alien who intends to enter as a nonimmigrant and (2) lawful permanent residents who leave the country temporarily and then seek to reenter if they are returning to a lawful unrelinquished domicile of at least 7 consecutive years.

Some excludable aliens who want to enter as immigrants can qualify for a waiver if they are spouses, children, or parents of U.S. citizens or lawful permanent residents. Generally they must prove, among other things, that if they are not allowed to enter, extreme hardship will result to the immediate relative.

Aliens may also apply for a waiver of excludability by claiming asylum. (See p. 68.)

The Deportation Process

INS may apprehend aliens suspected of being deportable in several ways, for example, during inspections and investigations at employers' premises or at state, local, and federal prisons and jails.

The apprehending INS officer may offer the alien the opportunity to depart the country voluntarily if the alien is eligible; for example, not a criminal. The alien may also apply to INS for certain types of relief from deportation such as asylum or adjustment of status.[7] If voluntary departure is not offered or accepted, or the relief is not granted, INS serves the aliens with an order to show cause, which requires the alien to appear at a hearing to show cause why deportation should not occur.[8] The order to

[6]In some circumstances, a waiver is mandatory; that is, the Attorney General has no authority to exercise discretion as to whether or not the waiver will be granted. For example, immigrant aliens ordinarily excludable on grounds of illiteracy cannot be excluded if they have close relatives in the country.

[7]INS personnel, including trial attorneys, may request INS investigators to obtain evidence to support denial of certain applications for relief. These investigations, however, are generally not done because of higher priorities within INS.

[8]There are two types of orders to show cause. One is mailed to the aliens and notifies them that they must appear at a hearing. The other type includes a warrant of arrest and requires INS to take the alien into custody. This type is used when INS suspects the alien is not likely to appear for a deportation hearing.

show cause is also filed with EOIR, which notifies the alien of the time and place of the hearing.

At the hearing, the immigration judge explains the order to show cause to the aliens. The judge also informs aliens of their right to apply for any type of relief for which they may be eligible, such as asylum.

The government must establish the aliens' deportability by clear, unequivocal, and convincing evidence. For aliens who entered illegally, this usually requires INS to show that the alien is not a citizen. The burden of proof then shifts to the alien to establish the time, place, and manner of entry. If unable to do so, the alien is presumed to be in the country illegally. For those who entered legally, INS must show that they violated the conditions of their entry; for example, overstayed their visa. For lawful permanent residents, INS must show that the aliens meet one of the other grounds for deportability, such as criminal convictions. Deportability generally is not an issue in deportation hearings because aliens usually concede that they are deportable.

During the hearing, the alien may request certain types of relief from deportation or may renew requests for relief previously denied by INS, which an immigration judge can grant. No new evidence is needed to renew requests. Aliens must prove they are eligible for, and should be granted relief from, deportation.

In response to the alien's request for relief, the immigration judge can

- grant the request, in which case the alien remains in the country;
- deny the request, in which case the alien is ordered deported and must leave the country or appeal the decision to BIA within 10 days; or
- grant voluntary departure and issue an alternate order of deportation so that if the alien does not depart by a specified date, INS can apprehend and deport the alien without further proceedings.

If the alien appeals to BIA and it upholds the immigration judge's decision to deport the alien, then INS issues a surrender letter ordering the alien to surrender to INS. However, the alien can petition for review to the U.S. Court of Appeals and must do so within 6 months of the final order of deportation. The petition for review automatically stays deportation. The court's review considers only the administrative record of deportation proceedings and is limited to those determinations made during those proceedings, for example, challenges to the finding of

deportability and to the denial of relief from deportation.[9] The alien or INS may appeal an adverse court of appeals decision to the Supreme Court.

When all appeals are exhausted, and aliens are still found to be deportable, they are required to surrender to INS for removal from the country. Aliens may request a stay of deportation from the INS district director but are still required to surrender for deportation. If they fail to do so, INS must locate and apprehend them.[10]

Relief From Deportation

Aliens may claim relief from deportation under approximately 20 provisions of law and regulations. The burden of proving eligibility for relief and persuading INS, the immigration judge, BIA, or the court that it is warranted, rests with the alien.

Voluntary departure is the most common form of relief. It relieves aliens from deportation but requires them to leave the country, usually at their own expense.

Some relief provisions provide permanent relief; that is, complete exemption from deportation and the opportunity for the alien to attain lawful permanent resident status. Other relief provisions allow aliens who have been ordered to leave the country to postpone their removal.

Voluntary Departure

This benefits the government by avoiding much of the administrative and judicial effort and expense connected with formally deporting an alien. It relieves the alien from the consequences of being deported—being barred from reentry for 5 years and subject to felony prosecution if reentry is made or attempted after being deported. It also allows the alien to apply for readmission to the United States.

Under this procedure, deportable aliens admit to illegal status and agree to leave the country without a formal deportation order at their own

[9]Issues affecting the alien's status decided upon by INS before or after deportation hearings are outside the scope of the court's review but may be appealed to the district court.

[10]Aliens ordered deported as criminals, subversives, or on other grounds related to criminality, immorality, or narcotics, who fail or refuse to depart from the United States within 6 months are subject to a criminal penalty of up to 10 years' imprisonment. Aliens who illegally reenter the United States after being deported or excluded are subject to a criminal penalty of imprisonment of up to 2 years and/or a $1,000 fine. If they were deported for commission of a felony and reenter or attempt to reenter, they are subject to a fine and/or up to 5 years' imprisonment. For aggravated felonies, the penalty is a fine and/or up to 15 years' imprisonment.

expense.[11] Voluntary departure may be granted by INS (to avoid deportation proceedings) or by an immigration judge once deportation proceedings have begun.

When immigration judges grant voluntary departure, they also usually issue an alternate order of deportation, which allows INS to deport the aliens if they have not left voluntarily by the date specified. An alien may appeal denial of voluntary departure to the courts.

In fiscal year 1987, about 1.1 million aliens were granted voluntary departure. As of September 30, 1987, INS reported 65,000 outstanding cases in which aliens had been granted voluntary departure by INS but had not yet departed or had not had their departure verified by INS. There were also 28,000 outstanding cases in which aliens had absconded rather than depart.

The Attorney General may also grant aliens from specified countries who have been found to be deportable, extended voluntary departure. This procedure, authorized by regulation, postpones their removal indefinitely, usually for humanitarian reasons. For example, aliens may face hazards if they return to their countries of origin because of dangerous political conditions. As of September 30, 1987, 75,000 aliens were under extended voluntary departure.

Suspension of Deportation

Under section 244 of the INA, aliens may request to have their deportation suspended and their status adjusted to lawful permanent resident. This has been one of the most common forms of relief.

Suspension of deportation may be granted only by an immigration judge at his discretion. To qualify, aliens must show 7 years of continuous physical presence in the United States, prove good moral character during that period, and demonstrate that deportation would result in extreme hardship to themselves or their spouses, parents, or children who are citizens or lawful permanent residents. If the aliens' deportation is based on criminal or national security grounds, qualifying for suspension is more difficult. They must show continuous physical presence for 10 years following the deportable act, prove good moral character throughout that period, and demonstrate exceptional and extremely unusual hardship to themselves or family members.

[11] Aliens authorized to depart voluntarily but financially unable to do so may have their removal paid for by the government. This constitutes voluntary departure with prejudice and the aliens must wait 5 years before applying for admission.

If suspension of deportation is granted, the Attorney General makes a report of the suspension to Congress. In order to disapprove the suspension, it appears that Congress must enact legislation.

Adjustment of Status

Under section 245 of the INA, nonimmigrant aliens who are in the country and meet the requirements for an immigrant visa can have their status adjusted to that of lawful permanent resident without having to follow the usual procedure of traveling abroad to receive an immigrant visa. Aliens may seek adjustment of status before or during deportation proceedings. In the latter case, the application is treated as a request for relief from deportation. This relief is usually claimed by nonimmigrants who have overstayed their visas. In fiscal year 1987, INS reported that a total of 214,521 aliens were adjusted to permanent resident status, but it did not report how many of these adjustments were granted during deportation proceedings.

Adjustment of status is not available to aliens who entered without inspection or to aliens who have worked without authorization (unless they are immediate relatives of U.S. citizens). IRCA made adjustment of status unavailable to aliens who have not maintained continuous legal immigration status (unless they are immediate relatives of U.S. citizens). The IRCA provision could reduce somewhat the number of requests made for this relief during deportation proceedings by nonimmigrants who have overstayed their visas (and thus have not maintained legal status).

Registry

Under section 249 of the INA, aliens may request and receive lawful permanent resident status if they (1) entered the United States before January 1, 1972; (2) are of good moral character; (3) have been in continuous residence since entry; and (4) are eligible for citizenship. This relief is not available to aliens who would be inadmissible to the country, such as criminals.

Asylum

Under procedures established in accordance with section 208 of the INA, aliens may, before deportation proceedings, make application for asylum to an INS district director or during deportation proceedings to an immigration judge. The aliens must demonstrate that they are unable or unwilling to return to their country of nationality because of a well-founded fear of persecution on account of race, religion, nationality, political opinion, or membership in a particular social group. The immigration judge solicits an advisory opinion from the Department of State on the applicant's eligibility for asylum if INS has not previously received one.

If the aliens' applications are approved, they are granted status as asylees for 1 year, after which they may apply for legal permanent residency. Denial of asylum may be appealed to BIA and to the courts. In fiscal year 1987, INS granted asylum to 5,093 aliens, denied 3,454 applications and closed 37,269 other cases because the aliens withdrew the applications, did not consent to an INS interview, or died. As of September 30, 1987, INS reported that 80,730 asylum applications were pending.

Withholding of Deportation

Asylum requests filed with an immigration judge are also considered as requests for nonrefoulement (withholding of deportation). This relief is available under section 243(h) of the INA to aliens whose lives or freedom would be threatened in a particular country on account of race, religion, nationality, membership in a particular social group, or political opinion. It differs from asylum in that it protects the alien against return only to the threatening country. Deportation to another (nonthreatening) country is not precluded. Further, it does not entitle the alien to other benefits such as work authorization.

Waiver of Deportation

Section 212(c) of the INA allows the Attorney General to waive deportation for a lawful permanent resident who has maintained a lawful domicile for 7 consecutive years. There is no express requirement that the alien demonstrate good moral character or extreme hardship. Although this relief was originally available only as a waiver of excludability for residents returning from abroad, it is now also available to deportable aliens residing in the country. Relief may be granted only when deportation is based on a ground for deportation for which there is a comparable ground for exclusion.

Stay of Deportation

Aliens under final orders of deportation may be granted a stay of deportation by INS (for example, to allow aliens to attend to personal needs before departing). INS, immigration judges, and BIA may also grant stays in connection with motions to reopen or reconsider an alien's case. Denial of such stays may be appealed to a district court. Direct appeals automatically stay deportation, while motions do not.

Additional Means of Precluding Deportation

While not relief provisions as such, there are two additional means by which aliens may be spared from deportation. One pertains to aliens who may be subject to deportation on the basis of having been convicted of certain crimes. Section 241(b) of the INA permits the court in which an alien is convicted to recommend to the Attorney General that the alien not be deported. If INS is unable to convince the court not to make the

recommendation, it is precluded from using the conviction as a basis for deportation. However, such aliens might be subject to deportation on other grounds, such as illegal entry.

Additionally, INS has a "deferred action" procedure, under which it administratively gives some deportation cases a lower priority so as to utilize enforcement resources more efficiently. This enables INS to terminate or decline to initiate deportation proceedings, or decline to carry out an order of deportation. Factors to be considered in deferring action include the unlikelihood of ultimately removing the alien; sympathetic factors that threaten to prolong deportation proceedings; the possibility that adverse publicity toward INS will be generated; and whether or not the alien is a member of a dangerous class, such as criminals. Deferred action is recommended by the district director but must be approved by the regional commissioner.

Objectives, Scope, and Methodology

By letter dated June 10, 1987, the House Judiciary Subcommittee on Immigration, Refugees, and International Law requested that we examine the procedures governing the exclusion and deportation of aliens.

As agreed with the Subcommittee, we obtained information on:

- the administrative and judicial framework used to exclude and deport aliens, including the various actions aliens can take to remain in the country;
- the length of time to complete the deportation and exclusion processes in INS' New York and Los Angeles Districts; and
- the number of aliens who do not appear at scheduled deportation and exclusion hearings, including a review of their case files in INS' New York and Los Angeles Districts.

We also agreed to analyze H.R.3187 (99th Congress) and H.R.1510 (98th Congress), which would have altered the handling of exclusion and deportation cases, to determine how these proposed bills could affect the exclusion and deportation processes.

To obtain information on the administrative and judicial framework used to exclude and deport aliens, we examined applicable laws and regulations. We reviewed policies and procedures and held discussions with representatives at INS' Central Office and New York and Los Angeles District Offices and at EOIR headquarters and field offices in New York and Los Angeles. We also considered information contained in several publications dealing with the deportation and exclusion processes.[1] We also observed deportation hearings held in New York and Los Angeles.

We reviewed deportation and exclusion cases in EOIR's New York and Los Angeles field offices to ascertain the number of calendar days needed to complete the deportation and exclusion processes, and to examine the problem of aliens who fail to appear at deportation and exclusion hearings. In fiscal years 1986 and 1987, these two districts accounted for approximately 34 percent of the exclusion cases and 25 percent of the deportation cases completed by EOIR nationwide. We discussed the results with INS officials at these two locations.

[1]David A. Martin, Major Issues in Immigration Law, (Federal Judicial Center, 1987); Dan Kesselbrenner and Lory D. Rosenberg, Immigration Law and Crimes, (New York: Clark Boardman Company, Ltd., 1987); and Peter H. Schuck, "The Transformation of Immigration Law," 84 Columbia Law Review 1 (1984).

We also discussed the results of our work at these two locations with INS representatives in El Paso, Texas; Miami, Florida; and San Diego, California and the EOIR officials responsible for these cities. These additional locations were selected because a large number of aliens are apprehended there and these three districts deal with different types of issues than Los Angeles and New York. The major difference is that the El Paso and San Diego Districts have land borders that afford aliens greater opportunity for illegal entry. The Miami District has a large alien community like New York and Los Angeles, but its long coastline presents different challenges to INS' enforcement efforts. We discussed the results of our analysis in New York and Los Angeles with officials from the three locations to determine if there were any similarities or differences in their respective regions, which we then considered in developing our conclusions. Their views were incorporated where appropriate. We did not verify the data provided or the comments made by these officials.

To determine the number of calendar days elapsed in the deportation and exclusion processes, as well as to determine the characteristics of the aliens involved in these cases, we reviewed samples of deportation and exclusion cases at each level of adjudication; that is, immigration judges, BIA, and federal circuit court. See table II.1 for actual numbers of cases reviewed for each adjudication level. During the period covered by our review, no exclusion cases from New York and Los Angeles and no deportation cases from New York were decided by the federal courts. When the universe of a type of case was so small that the sampling error would be too large to make meaningful projections, we selected all available cases for reviews. Otherwise, random samples were taken. The size of each random sample was determined by using a 95-percent confidence level, with an error rate of plus or minus 10 percent.

We excluded from our review, cases in which aliens in deportation proceedings applied for legalization under IRCA because legalization was a one-time program that will not affect the deportation process in the future. We also excluded cases in which EOIR held deportation hearings while aliens were in prison. Since aliens cannot be deported until they complete their prison sentences—which may occur many months after the deportation hearing—such cases do not accurately reflect the true time span of the deportation process. We also excluded cases containing classified information and cases involving Nazis, since these rarely occur and are not representative of the usual types of deportation and exclusion cases.

The time period was different for each sample or universe we selected. The reason for this was because available records did not permit us to use the same time period for each sample or universe. For cases completed by immigration judges, our samples or universes were drawn from a 1-year period in New York and a 3-month period (January 1-March 31, 1987) in Los Angeles. We used the 3-month period because at the time our review was initiated (from July 1987 to April 1989), an automated listing of completed cases was not available for EOIR's Los Angeles field office as it was for its New York field office. Accordingly, we had to review the logs of cases maintained by each immigration judge in Los Angeles and manually compile a list of all completed deportation and exclusion cases. Because data were kept manually, additional work would have been needed to compile a full year's data. Therefore, we used a 3-month period rather than the 1-year period used in New York. According to EOIR and INS representatives, no unusual events occurred during the period January 1 - March 31, 1987, and therefore, this 3-month period of activity would be similar to any other 3-month period in the EOIR Los Angeles field office.

For cases completed by BIA and the federal court, samples and universes were drawn for a 1-year period in both New York and Los Angeles. The 1-year periods, while comparable, are not identical, because available records did not permit the use of identical time periods for each sample or universe. According to the INS Assistant Commissioner for Detention and Deportation, the issues disclosed by our review of cases during these time periods reflect the current situation regarding deportation and exclusion.

We had to adjust the universe of cases from which our sample was drawn. When a selected case was unavailable, we selected a substitute case using the next available random number. A case was considered unavailable if it was transferred to another INS district or EOIR field office, INS or EOIR told us they could not locate the case file, or INS or EOIR did not present the case to us within 6 weeks of the date we requested it. When INS and EOIR could not find some case files, we had to make the adjustment because without the specific cases we did not know if they met our selection criteria. Therefore, the estimates in this report relate to the adjusted universes. According to INS and EOIR representatives, there was nothing unique about these cases to differentiate them from those that were available.

Table II.1: Types and Numbers of Cases Reviewed

	New York				Los Angeles			
Type of case	Universe	Adjusted universe	Sample	Period	Universe	Adjusted universe	Sample	Period
Exclusion cases completed by immigration judges	2,296	2,081	97	8/1/86–7/31/87	44	26	26	1/1/87–3/31/87
Deportation cases completed by immigration judges	3,066	2,305	97	8/1/86–7/31/87	2,631	1,724	97	1/1/87–3/31/87
Exclusion cases completed by BIA	137	53	53	7/1/86–6/30/87	17	5	5	7/1/86–6/30/87
Deportation cases completed by BIA	544	167	82	7/1/86–6/30/87	221	33	33	7/1/86–6/30/87
Deportation cases completed by circuit courts	0	0	0	10/1/86–9/30/87	20	20	20	10/1/86–9/30/87
Deportation cases in which aliens failed to appear for hearings	3,435[a]	2,282	97	8/1/86–7/31/87	1,889	1,071	97	1/1/87–3/31/87

[a]Includes IRCA cases.

For each case, we recorded information from INS, EOIR, and federal court files. Using a standard data collection instrument, we collected data on selected activities and events that occurred in the case from the date INS apprehended the alien to the date of the final action on the case or January 31, 1988, whichever was earlier.

To evaluate H.R. 3187 and H.R. 1510, we reviewed the provisions of the two bills in the context of our case review, where applicable, to determine if the provisions would have any impact on the problems disclosed by our review.

To supplement information obtained from our review of cases and to evaluate controls over aliens in the deportation and exclusion processes, including controls over their departure, we reviewed records and held discussions with INS representatives at the Central Office and the New York and Los Angeles District Offices, and EOIR representatives at headquarters and field offices in New York and Los Angeles. We also held discussions with representatives of the FBI to determine the feasibility of including in its NCIC, information on aliens who do not appear for deportation proceedings.

Because of resource and time constraints, we did not review computer controls relating to the computer-generated universes of completed

cases in New York provided to us by EOIR and completed cases appealed to the federal courts provided to us by Justice's Office of Immigration Litigation.

We did our work between July 1987 and April 1989.

Legislative Proposals for Streamlining the Exclusion and Deportation Processes

H.R. 1510, reported by the House Judiciary Committee on May 13, 1983, and H.R. 3187, introduced in the 99th Congress on August 1, 1985, contained a number of provisions for streamlining the adjudication of exclusion and deportation cases. These provisions dealt with (1) revised organizational structures for administratively adjudicating exclusion and deportation cases, (2) expedited exclusion procedures, (3) judicial review of exclusion and deportation cases, and (4) the handling of asylum cases.

Adjudicative Structures for Exclusion and Deportation Cases

H.R. 1510 proposed to establish a U.S. Immigration Board, an independent agency within Justice. Under the proposal, administrative law judges would hear exclusion and deportation cases. A board comprised of a chairman and six members appointed by the President would hear appeals from their decisions. The chairman of the board would appoint the administrative law judges.

H.R. 3187 sought to remove the hearing process from the executive branch. The bill proposed to establish a U.S. Immigration Court under article I of the Constitution. The court would include a trial division staffed by immigration law judges and an appellate division comprised of a chief judge and five appeals judges appointed by the President.

What impact these proposed structures would have on reducing the duration of exclusion and deportation cases is unclear. Neither proposal curtailed the rights or relief provisions available to aliens or the scope of jurisdiction now exercised by EOIR. However, both bills proposed to allow aliens 20 days to administratively appeal a final order of exclusion or deportation as opposed to the current maximum of 10 days.

Expedited Exclusion

Both H.R. 1510 and H.R. 3187 propose an expedited exclusion procedure that allows an INS officer to exclude an alien without a hearing if the alien does not (1) present the documentation required to enter the United States; (2) have any reasonable basis for legal entry into the United States; and (3) indicate an intention to apply for asylum. The alien would have the right to have these conditions redetermined by an administrative law judge/immigration trial judge at a nonadversarial summary proceeding. If the alien claimed asylum, the alien would be entitled to an exclusion hearing but the hearing would be limited to asylum issues raised in connection with the asylum application.

By eliminating an exclusion hearing and the related scheduling and administrative details, this procedure could reduce the duration of the exclusion process in those cases in which it would apply. Also, by limiting the exclusion hearings to the single issue of asylum, the prospects for speedier completion of exclusion hearings would be enhanced.

Judicial Review

Both bills contain several proposals regarding judicial review of final orders of exclusion and deportation designed to reduce the overall duration of the exclusion and deportation processes.

H.R. 1510 requires all petitions for review of final orders of exclusion and deportation to be made to the appropriate circuit court of the U.S. Court of Appeals. It amends current law by eliminating the use of habeas corpus for judicial review of final orders of exclusion, thus eliminating the district court level of judicial review. Instead of a petition for judicial review, H.R. 3187 allows aliens to file a writ of certiorari[1] with the U.S. Court of Appeals for the Federal Circuit for review of all exclusion and deportation orders. This could reduce the time needed to complete exclusion and deportation cases if the court refuses to hear the case. The denial of certiorari would eliminate the need for and time involved in judicial review.

Both bills reduce the current 6-month period an alien has to file for judicial review. H.R. 1510 requires the filing of a petition for review not later than 60 days from the date of the final order of exclusion or deportation. H.R. 3187 requires the filing of a writ of certiorari not later than 30 days from the date of the final order.

Both bills also propose to eliminate from judicial review, motions to reopen or reconsider a number of matters including exclusion or deportation proceedings, asylum determinations, asylum applications, and the Attorney General's denial of a stay of deportation or exclusion. By removing these motions from the jurisdiction of the courts, the duration of the exclusion and deportation processes can be considerably reduced. For example, under current procedure an alien can be ordered deported by an immigration judge but can file a motion to reopen the case along with a request for a stay of deportation. If the motion is denied, the alien can then appeal the denial through the courts. Denying the alien the opportunity to make such appeals should result in completing the process sooner.

[1] A request from a lower court to an appellate court to hear an appeal.

Handling of Asylum Cases

H.R. 1510 and H.R. 3187 call for holding a hearing on an alien's asylum application and establish a series of events and time frames applicable to the hearings.

Once an exclusion or deportation proceeding has been instituted:

- the alien must file intent to apply for asylum no later than 14 days after notice of proceedings is served;
- the alien must file an asylum application no later than 30 days after filing the notice of intent;
- a hearing on the asylum application must commence no later than 45 days after filing of the application, unless the alien objects in writing;
- the administrative law judge or immigration trial judge must render a decision on the application no later than 30 days after the hearing ends;
- a transcript of the hearing is to be made available no later than 10 days after the hearing is completed; and
- a decision on the appeal of an asylum decision must be made no later than 60 days after the appeal is filed.

The establishment of and adherence to these time frames could result in exclusion and deportation cases involving asylum claims proceeding more quickly than they do currently. For example, the proposed total time frame from the notice of proceedings to the immigration judge's decision is 119 days. In New York, half of the asylum cases included in our review took more than 665 days to complete, while in Los Angeles, the comparable figure was 1,024 days.

Both bills require that asylum cases be heard by specially designated and trained administrative law judges/immigration trial judges. In addition, H.R. 1510 requires that every asylum application be heard by an administrative law judge, thus removing this authority from INS district directors who, under current procedures, can make the initial determinations on asylum applications. H.R. 1510 also precludes judicial review of any aspect of the asylum process until the U.S. Immigration Board enters a final order of exclusion or deportation. This provision could reduce the duration of the process since it denies aliens access to the courts and precludes the exclusion or deportation case from being interrupted until expulsion is imminent.

Sampling Errors for Estimates Used in This Report[a]

Page	New York			Los Angeles		
	Percent	Sampling error	Sample size	Percent	Sampling error	Sample size
22	27	6.28	194	[b]		
22	35	9.54	97	18	7.69	97
23	36	6.79	194	[b]		
23	11	6.26	97	10	6.26	97
23	35	9.54	97	67	9.41	97
23	65	9.54	97	33	9.41	97
24	35	9.54	97	67	9.41	97
24	40	9.80	97	22	8.29	97
24	25	8.66	97	11	6.26	97
24	57	12.40	62	47	22.44	20
26	38	9.71	97	28	8.98	97
26	24	8.54	97	38	9.71	97
26	14	6.94	97	23	8.42	97
26	24	8.54	97	11	6.26	97
27	62	9.71	97	72	8.98	97
27	58	9.87	97	78	8.29	97
29	57	9.90	97	79	8.15	97
29	58	9.87	97	81	7.85	97
30	35	9.40	97	18	7.69	97
30	3	3.41	97	5	4.36	97
32	57	9.90	97	93	5.10	97
32	57	9.90	97	93	5.10	97
32	43	9.90	97	7	5.10	97
34	35	9.54	97	67	9.41	97
35	57	9.90	97	79	8.15	97
39	59	6.94	194	[b]		
40	56	9.93	97	62	9.71	97
40	11	6.26	97			
40	44	9.93	97	37	9.66	97
40	32	9.33	97	26	8.77	97
40	13	6.73	97	34	9.48	97
40	11	6.26	97			
41	79	8.15	97	89	6.26	97
41	21	8.15	97	11	6.26	97
42	38	9.71	97	42	9.87	97
42	41	9.84	97	47	9.98	97
42	21	8.15	97	11	6.26	97
43	85	7.14	97	81	7.85	97

(continued)

	New York			Los Angeles		
Page	Percent	Sampling error	Sample size	Percent	Sampling error	Sample size
43	20	8.00	97	8	5.43	97
44	16	7.33	97			
45	42	9.87	97	35	9.54	97
45	89	6.81	82			
45	96	3.92	82			
51	49	13.21	56	65	10.59	79
56	84	7.33	97			
56	71	9.08	97			
56	13	6.73	97			
56	12	6.50	97			
56	92	5.43	97			
57	86	6.94	97			
57	14	6.94	97			
57	48	9.99	97			
57	38	9.71	97			
57	14	6.94	97			
58	55	9.95	97			
58	8	5.43	97			
58	8	5.43	97			

[a]The confidence interval is the percent plus or minus the sampling error.

[b]New York and Los Angeles are combined.

Agency Comments

U.S. Department of Justice

Washington, D.C. 20530

OCT 06 1989

Richard L. Fogel
Assistant Comptroller General
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Fogel:

The following information is being provided in response to your request to the Attorney General, dated August 28, 1989, for comments on the General Accounting Office (GAO) draft report entitled, "Deporting and Excluding Aliens from the United States." The Department agrees in general with the findings of the report; however, we would like to elaborate on several the report's major points related to the timeliness of the deportation and exclusion processes, and the failure of aliens to appear at scheduled hearings.

With respect to the timeliness of the deportation and exclusion processes, although we agree that this report generally reflects the processes as administered by the Department of Justice, we would like to emphasize that the complexity of the process and the desire of aliens to prolong it are major contributors to the processing times. The deportation and exclusion processes require formal, often complex, legal proceedings to address fundamental individual issues. These processes include a full administrative hearing before an Immigration Judge with extensive due process protections, e.g., the right to counsel, and the right to present, inspect and object to evidence. During these proceedings the alien may raise such sensitive and difficult matters as asylum, withholding of deportation, suspension of deportation, adjustment of status, waivers and other relief, as well as legal defenses to deportability or excludability. Upon completion of the hearing before the Immigration Judge, there are appeal rights to the Board of Immigration Appeals, also with extensive due process protections. Finally, judicial review is available in Federal Court. All of these factors affect timeliness in a way that is difficult, if not impossible, to quantify. The due process protections provided by the Constitution or statute cannot be circumscribed by direct Department action. Thus, we are limited in our ability to accelerate deportation and exclusion processes when they are slowed by these protections. However, to the extent that due process protections are provided by Department regulation, the Department will review its regulations in order to determine if modifications are possible that would make the procedures more efficient without violating due process.

As to the factors affecting timeliness over which the Department has control, we believe that the Executive Office for Immigration Review (EOIR) Automated Nationwide System of Immigration Review (ANSIR) will eventually demonstrate major improvements in the processes since the period subject to the GAO review (1987). The full implementation of the ANSIR system, a comprehensive data base case tracking system for all deportation and exclusion cases, was achieved in 1988. This system not only contains all relevant case information and identifies all upcoming and overdue actions by dates, including the need to schedule hearings, but also allows a case to be electronically transferred from one field office to another for both case information transport and recordkeeping purposes. This development should significantly enhance the Department's ability to ensure more timely processing of such cases.

Another major point raised throughout the GAO report is that many aliens subject to deportation and exclusion fail to appear for scheduled hearings. GAO attributes this failure to problems in the notification system which result in aliens not receiving notice of scheduled hearings, to a lack of incentives to ensure that aliens appear, and to coincidental incentives for aliens not to appear.

The Department concurs with GAO's assessment of problems within the notification process.1/ The Immigration and Naturalization Service (INS) and EOIR are already undertaking joint efforts to improve the initial notification process. The proposed alternative methods suggested by GAO to ensure that aliens receive their initial notification will be carefully considered along with others developed by INS and EOIR. We must point out, however, that GAO's suggestion that the Department limit changes of venue will not be a simple solution, and may not even be a viable solution, to the notification problem. Although an alien's movement from one location to another exacerbates the notification problem, the Immigration Judges have limited authority to restrict the change of venue for an alien without infringing on the alien's right to due process. We are, nonetheless, open to exploring possible limitations on changes of venue which do not unduly burden alien rights.

The Department also agrees that there are insufficient incentives to ensure that aliens appear for their hearings. We agree that current bonding practices have not ensured the appearance of many

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1/ We do, however, find the statistics provided on the subject of aliens' non-appearance at hearings somewhat inconclusive as they relate to the problem of notification. Further analysis or elaboration on the statistics presented may clarify their significance to notification specifically, as well as to the deportation and exclusion processes in general.

aliens at their deportation hearings. We are considering changes in the Department's regulations to resolve this problem, such as using full cash bonds, establishing national guidelines for bond amounts, and requiring greater coordination between EOIR and INS on issues concerning the setting of bond and the release of aliens on bond pending hearings. We also note that the limited number of hearings held "in absentia" indicates that it is unlikely that a hearing will proceed without the alien's presence and this further diminishes incentives for an alien to appear at a hearing. We are open to expanding the number of hearings held "in absentia" once we have increased the reliability of our notification process.

Beyond the fact that the posting of a bond does not ensure an alien's appearance at a deportation and exclusion hearing, we recognize that certain steps in the immigration process provide, as an unintended incentive for an alien not to appear at a hearing, a delay in the process which increases the time accumulated in the country and thereby enhances support for requesting relief from deportation. The Department is willing to consider tightening its regulations permitting an alien to make a motion to reopen in order to limit its availability to aliens who fail to appear for hearings. Again, this will only be possible once we have increased the reliability of the notification process.

Other GAO recommendations for curtailing the incentives not to appear, precluding relief from deportation and exclusion and tolling the accumulation of time towards relief, require legislative action. The Department would be generally in favor of legislative modifications to the extent that they provide meaningful solutions to some of the problems inherent in the present deportation and exclusion process while assuring due process is accorded each alien. Both INS and EOIR are attempting to determine the impact of GAO's proposed changes to both increased effectiveness of the process and increased administrative requirements. They will review their findings, suggest specific legislative proposals consistent with their findings, and coordinate any proposals with appropriate Department officials.

We appreciate the opportunity to comment on the draft report and hope that you find our comments both constructive and beneficial.

Sincerely,

Harry H. Flickinger
Assistant Attorney General
for Administration

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Glossary

Alien	A person not a citizen or national of the United States.
Deportable Alien	An undocumented alien, or a lawful permanent resident who meets one or more of the 19 statutory grounds for deportability.
Deportation	The formal removal of an alien from the United States.
Excludable Alien	An alien who is denied admission into the United States because he or she meets one or more of the 33 statutory grounds for excludability.
Exclusion	The formal denial of an alien's admission into the United States.
Immigrant	An alien legally admitted into the United States as a lawful permanent resident.
Lawful Permanent Resident	A noncitizen who resides legally in the United States and who may, after 5 years' residence, apply for citizenship. Also known as a "green card" holder.
Nonimmigrant	An alien legally admitted into the United States for a specified temporary period and for a specific purpose such as business or tourism.
Parole	A procedure used to temporarily admit an excludable alien into the United States, for emergency reasons or when in the public interest.
Undocumented (Illegal) Alien	An alien who enters the United States without undergoing inspection by the Immigration and Naturalization Service, or a nonimmigrant alien who violates a condition of his or her visa.
Visa	A document issued by the Department of State authorizing an alien to be admitted into the United States as either an immigrant or a nonimmigrant.