

GAO

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

March 1986

CRIMINAL ALIENS

INS' Investigative Efforts in the New York City Area



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General Government Division
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March 10, 1986

The Honorable Alfonse M. D'Amato
United States Senate

Dear Senator D'Amato:

This report responds to your request of July 25, 1985, and subsequent discussions with your office in which you asked us to obtain information about the Immigration and Naturalization Service's (INS) activities in investigating and apprehending deportable criminal aliens in the New York City area. We briefed you on the results of our review on January 14, 1986. This report summarizes the information presented at the briefing concerning

- . the estimated magnitude of the criminal alien population,
- . investigative strategies and techniques used by INS' New York District Office, and
- . problems the district office faces in investigating and apprehending deportable criminal aliens.

It also provides the number of investigators who left the district office during fiscal years 1983-85 and the reasons for that attrition.

Deportable criminal aliens are those aliens (noncitizens) who are convicted of a crime of moral turpitude, such as larceny, rape, and manslaughter and sentenced to confinement for 1 or more years, within 5 years of entry into the country, or who are convicted of two such crimes anytime after entry. Aliens are also deportable if they are narcotic addicts or if they are convicted of a narcotic drug or marijuana offense, certain firearms offenses, or prostitution or related activities. Criminal aliens may be residing in the country legally or illegally.

In looking into the deportable criminal alien problem, we held discussions with managerial, supervisory, and investigative personnel at the INS headquarters in Washington, D.C.; the Eastern Regional Office in Burlington, Vermont; the New York District Office, and with representatives of federal, state, and local law enforcement agencies in New York. We also reviewed

INS policies, procedures, records, and other documents relating to investigations of deportable criminal aliens. Our work was conducted between August 19, 1985, and January 31, 1986.

This report deals primarily with INS' investigation of criminal aliens for possible deportation. The steps taken by INS to deport these aliens and to prevent their reentering the country are the subjects of subsequent reviews that we agreed to undertake for you. The results of our review of the INS investigations of deportable criminal aliens are summarized below and discussed in detail in the appendix, as are additional details concerning our objectives, scope, and methodology.

- . The number of deportable criminal aliens in the geographic area covered by the INS New York District Office (New York City and nine adjacent state counties) is not known. However, some general indication of the criminal alien population is that in the 15-month period ending September 30, 1985, the New York City Police Department reported that 12,306 aliens were arrested on felony charges (about 10 percent of the total felony arrests) and 11,109 aliens were arrested on misdemeanor charges.
- . About 75 percent of the New York District Office (NYDO) investigative time spent on criminal alien cases involves aliens who are in prison. Less effort is made to determine the deportability of aliens who are not incarcerated. Many (about seven out of eight--87 percent) arrested for felony offenses do not go to prison. If many of those were convicted and otherwise met criteria for deportation, there could be a sizable deportable criminal alien population not focused on by INS. Cases involving aliens in prison are more likely to result in the apprehension and deportation of the aliens than are cases involving aliens not in prison. Thus, according to INS officials, concentrating on aliens in prisons is a judicious use of scarce resources.
- . Some indication of the number of potentially deportable criminal aliens not in prison is presented in the following statistics. In October 1985, NYDO received referrals from law enforcement agencies on 724 aliens who had been involved in a criminal offense. Of these, NYDO investigators determined that further action was required on 438.
- . As of November 20, 1985, NYDO had about 200 potentially deportable alien cases awaiting assignment to investigators. These aliens were to be located and apprehended for deportation. An estimated 84 percent of the cases had been awaiting assignment for more than 3 months, and about 31 percent for more than a year. The

aliens involved in these cases continued to be arrested and convicted for crimes after NYDO had identified them as potentially deportable. For example, 77 percent of the aliens were arrested at least once after being identified as potentially deportable, 45 percent were arrested more than once, and 11 percent were arrested five or more times. Twenty-one percent of the aliens had been deported at least once and were arrested at least once after returning to the United States.

- . In fiscal year 1985, about 16 percent of investigative time was spent on criminal aliens. The remaining investigative time was spent as follows: 20 percent on employers of illegal aliens; 49 percent on various fraudulent immigration schemes; and 15 percent on other types of investigations such as those involving EEO complaints. The breakdown of investigative time is generally in keeping with INS service-wide priorities.
- . As of February 3, 1986, NYDO reported that there were 25,943 aliens in various stages of being deported. Detention space is available for several hundred. Most apprehended aliens are released on bond or on their own recognizance. In fiscal year 1984, 2,757 such aliens could not be found for deportation. These conditions could limit INS' efforts to increase investigations of criminal aliens.
- . As of September 30, 1985, NYDO had 119 investigators, including supervisors. The district office's attrition rate for investigators has been among the three highest of the 10 districts in the INS Eastern Region during fiscal years 1983-85. Of 43 investigators who left the district office during this period, we interviewed 33 (the remaining 10 could not be contacted) and found that 13 had retired, 18 had transferred to other government agencies or jobs, and 2 had been fired.

There is insufficient data to fully measure the extent of the deportable criminal alien problem in the New York City area. There is little doubt, however, that not all of the criminal alien population is being investigated by INS. As a result, criminal aliens who should have been deported have remained in the country and have committed additional crimes. Whether INS should devote more resources to the criminal alien problem in addition to or at the expense of other priority areas is largely a policy matter and beyond the scope of this report.

As requested by your office, we did not obtain official agency comments on this report. However, the contents of the report were discussed with INS officials, and their comments were

considered in preparing the final report. As arranged with your office, unless you publicly announce the contents of the report earlier, we plan no further distribution until 7 days from the date of the report. At that time, we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Arnold P. Jones".

Arnold P. Jones
Senior Associate Director

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Efforts to Apprehend Criminal Aliens

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Efforts to Apprehend Criminal Aliens

BACKGROUND

Under section 241(a) of the Immigration and Nationality Act, the Immigration and Naturalization Service (INS) can deport aliens (noncitizens) who are convicted of or involved in certain criminal, immoral, or drug-related acts. INS refers to those convicted as deportable criminal aliens. Criminal aliens may be in the country legally or illegally.

A legal alien is deportable if (1) convicted of a crime involving moral turpitude committed within 5 years of entry and sentenced to confinement for a year or more; or (2) convicted of crimes involving moral turpitude not arising from a single action at any time after entry regardless of whether confined. Crimes of moral turpitude generally are those that involve such acts as larceny, rape, and manslaughter. Legal aliens are also deportable if they:

- are narcotic addicts or have been convicted of a narcotic drug or marijuana-related offense,
- have been convicted of prostitution or related activities, or
- have been convicted of possession of an automatic or semiautomatic weapon or sawed-off shotgun.

Illegal aliens are deportable regardless of whether they commit or are convicted of a crime. However, to be deported as a criminal alien, an illegal alien must be convicted of a crime.

The pursuit of criminal aliens in INS is primarily the responsibility of INS' investigative workforce. As of September 30, 1985, INS had 738 investigators on duty in its headquarters, four regional offices, and 34 districts.

The investigation function is one part of the total INS enforcement process. Investigations involve apprehending those who entered the country illegally or who otherwise do not belong here. Preventing such people from entering is the responsibility of INS' examination group, while maintaining them in custody and removing them is the role of INS' detention and deportation group.

Investigators conduct various types of INS investigations such as those involving entitlement fraud, illegal alien employment,

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and EEO matters. Regarding criminal aliens, the investigator's task essentially is to (1) identify those reported to INS by another law enforcement agency as potentially deportable aliens; (2) gather evidence to support the aliens' deportability; and (3) apprehend aliens and issue an order informing them that they must appear for a deportation hearing and show cause why the deportation should not proceed. Investigators also pursue deportable aliens who abscond while on INS bond. Where the alien is in the custody of another agency, such as a prison, the investigator issues to the agency a detainer, which is a notification that the alien is to be turned over to INS when released from the agency's custody. In fiscal year 1985, INS deported 4,750 criminal aliens.

The New York District Office (NYDO) is part of INS' Eastern Region and covers New York City and nine adjacent counties in New York state. As of December 1, 1985, NYDO had 120 investigators, including supervisors, of which 26 investigators and 4 supervisors were engaged in criminal alien investigations, at least part-time. In fiscal year 1985, a NYDO representative told us that the district deported 304 criminal aliens and issued 678 detainers and 629 orders to show cause.

OBJECTIVES, SCOPE, AND METHODOLOGY

By letter dated July 25, 1985, Senator D'Amato requested us to examine the effectiveness of the INS district office in New York in apprehending and deporting criminal aliens.

In a subsequent discussion with the Senator's office, we agreed to provide information on:

- the estimated magnitude of the criminal alien problem in the New York City area,
- investigative strategies and techniques used by NYDO, and
- problems that INS faces in apprehending criminal aliens.

In addition, we agreed to determine how many investigators had left the district office and the reasons for the attrition.

We also agreed to undertake subsequent reviews of INS' efforts to deport criminal aliens and to prevent their reentry into the country.

Efforts to Apprehend Criminal Aliens

In order to obtain information on and to identify any problems in NYDO's investigative strategy and efforts, we held discussions with managerial, supervisory, and investigative personnel at INS headquarters, the Eastern Regional Office, and NYDO; and reviewed policies, procedures, records, and other documents relating to investigations. We also reviewed and analyzed (1) all referrals on possible criminal aliens received by NYDO from law enforcement agencies in October 1985; (2) a random sample of 62 of 203 investigative cases for which NYDO had decided that the aliens met deportation criteria but had not conducted investigative work to apprehend them; and (3) a random sample of the status of 61 of 167 foreign-born inmates in New York State prisons whose parole eligibility date had passed. The samples are at the 95 percent confidence level with an error rate of plus or minus 10 percent.

To estimate the magnitude of the criminal alien problem and also to obtain information on how NYDO interacts with other agencies, we held discussions with and obtained appropriate data from representatives of the United States Attorney's Office for the southern district of New York, and the United States Probation Offices for the southern and eastern districts of New York; district attorneys for New York and Queens counties; New York State Police, New York State Division of Criminal Justice Services, New York State Division of Parole, and New York State Department of Correctional Services; and the New York City Criminal Justice Coordinator, New York City Police Department, New York City Department of Correction, and New York City Department of Probation.

To obtain reasons for the level of investigator attrition, we were able to contact and interview 33 of the 43 investigators who left NYDO in fiscal years 1983-85. We also reviewed all grievances filed by investigators during that period.

MAGNITUDE OF THE CRIMINAL
ALIEN PROBLEM IN NEW YORK

The number of deportable criminal aliens in the NYDO area is unknown. Some law enforcement agencies compile data on aliens. Other agencies compile data on the number of foreign-born people who are in their custody or with whom they have come in contact. However, these people may not necessarily be aliens, or if they are, they may not necessarily meet the deportation criteria for criminal aliens.

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Efforts to Apprehend Criminal Aliens

Although we found no data on how many arrests in the NYDO area involve deportable criminal aliens, we obtained related statistics compiled by law enforcement agencies and generally reported to NYDO. We agree with INS representatives that the statistics cannot be used as an accurate statistical indicator of the magnitude of the criminal alien problem. However, they provide some indication of the potential significance of the problem.

- In New York City, approximately one out of every 10 felony arrests involves an alien.
- In the 15-month period ending September 30, 1985, the New York City Police Department reported 12,306 felony arrests and 11,109 misdemeanor arrests of persons who admitted that they were aliens.
- In the first quarter of 1984, about 21 percent (56 of 265) of the suspects charged with murder and manslaughter in New York City were foreign-born.
- As of October 12, 1985, there were 34,575 inmates in New York State prisons, 2,891 of whom claimed foreign birth. The New York City Criminal Justice Coordinator told us that the population of foreign-born prisoners doubled between 1978 and 1982. About 1,280 inmates claiming foreign birth were in the 19 prisons within NYDO's geographic jurisdiction as of September 1, 1985.
- In 1984, 10 percent of the approximately 14,000 inmates held in New York City Department of Correction facilities were foreign-born, according to the New York City Criminal Justice Coordinator.
- As of December 4, 1985, there were 444 alien inmates in Federal correctional facilities located within NYDO's jurisdiction.
- The New York City Department of Probation's General Counsel estimates that about 20 illegal aliens enter the city's probation system each month.
- The United States Probation Offices for the southern and eastern districts of New York estimated that as of January 12, 1986, they were actively supervising about 368 aliens who were on probation or parole.

Efforts to Apprehend Criminal Aliens

THE NEW YORK DISTRICT
OFFICE'S PURSUIT OF
POTENTIALLY DEPORTABLE
CRIMINAL ALIENS

According to the assistant district director for investigations, NYDO's criminal alien policy is to direct investigative resources primarily toward aliens who are convicted and incarcerated. According to INS representatives, given NYDO's broad geographic area and the multiplicity of law enforcement agencies to be served by INS within that area, the most efficient way to address the criminal alien problem is to work within the prison system. These officials said that in view of the small NYDO staff, it is not practical to spend a large amount of staff time tracking aliens not in prison. Therefore, for many of those aliens arrested but not incarcerated, NYDO does not determine whether they have had prior convictions or other actions affecting their deportability status.

Aliens not in prison may constitute the bulk of aliens who commit crimes. About seven out of eight of those arrested for felony offenses (87 percent) do not go to prison.¹ If many of those arrested were convicted and met other criteria for deportation, there could be a sizeable deportable criminal alien group not focused on by NYDO. Cases of aliens not incarcerated but identified by NYDO as being deportable take months to assign to investigators.

Investigative efforts focus on
aliens in prison

Most criminal alien investigations by NYDO involve aliens who are serving sentences in prisons. The supervisor who coordinates criminal alien work told us that, on the average, NYDO investigators assigned to criminal alien cases spend about 75 percent of their time on prison cases. Additionally, we spoke to 13 out of 26 investigators involved in criminal alien cases about their caseloads. During November and December 1985, 78 percent of their ongoing criminal alien cases were prison

¹Arrestees may not be incarcerated because they are not indicted or convicted; they may fail to appear for a hearing or trial; or they may receive a probationary sentence or suspended sentence.

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cases. On the average, each investigator had 46 ongoing criminal alien cases, and, of these, 36 were prison cases. The investigators told us that these caseloads represented the norm.

The NYDO investigative coordinator for prison investigations told us that the investigator visits the prison; attempts to make positive identification of the alien; obtains a court-certified copy of the conviction report; and prepares a report for an INS trial attorney to ensure that INS has a deportation case. The investigator then issues a detainer to the prison and an order to show cause to the prisoner. When the alien's prison sentence is completed, the prison sends the alien to INS for deportation proceedings.

Not all potentially deportable prisoners are investigated by NYDO. As of September 1, 1985, there were 167 foreign-born prisoners in state prisons within NYDO's jurisdiction whose parole eligibility date was August 31 or earlier. These foreign-born prisoners could have been aliens and could have been released from prison. According to INS policy, NYDO should have made an investigation of each of these prisoners by September 1 in order to determine their deportability and, if warranted, issued detainers to the prisons and orders to show cause to the aliens.

On the basis of a random sample of 61 of these 167 prisoners, we project that as of January 17, 1986, NYDO had conducted investigations on 18 percent, or 30 of the 167 prisoners. As of September 1, 1985, an estimated 90 percent of the 167 prisoners had been incarcerated for more than 1 year, 33 percent for more than 3 years, and 18 percent for more than 5 years.

The 167 inmates were in prison beyond their parole eligibility date because the New York State Division of Parole considered them a threat to the community and, accordingly, did not parole them. According to parole representatives, their experience has shown that other inmates considered a threat to the community and released to INS have subsequently been released into the community during deportation proceedings and have committed more crimes. Because of this, parole officials said that they will not release to INS a prisoner who is eligible for parole but not likely to be paroled unless INS has issued a final order of deportation.

According to INS representatives, lists of prisoners have been sent to NYDO by the New York State prisons since June 1985, but

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have occasionally been deficient in not including, among other data, the prisoners' parole eligibility dates. These INS officials told us that this problem is being addressed.

Efforts to identify potentially deportable aliens who are not in prison

The INS investigator's handbook states that INS must quickly identify and establish the deportability and criminal history of aliens apprehended by local police. The handbook points out that quick action cannot be overemphasized because the alien is likely to jump bond or be discharged by the courts shortly after arrest.

The district office receives information on aliens, in writing or by telephone, from federal, state, and local law enforcement agencies, prosecutors, probation offices, parole offices, and others. These referrals are screened by a senior supervisory investigator who (1) decides whether the crime reported is serious and the alien appears to be deportable, (2) obtains additional information on the alien from NYDO files and criminal information and prison locator systems, and (3) decides whether an investigative case should be opened. A case will generally be opened if the alien has a criminal history, the alien appears to be deportable, and the alien is likely to be located and apprehended within a reasonable time period.

In October 1985, NYDO received referrals on 724 aliens involved in some type of criminal offense. For the most part, these referrals were provided by FBI and New York Police Department arrest reports.

The district office decided that no action was necessary on 286 of the 724 referrals. In 79 percent of the 286 referrals, NYDO did not consider the reported offense to be serious enough to establish the alien's deportability. An NYDO supervisory investigator told us that some referrals would have been looked into further if more time had been available.

The district office determined that action was needed on the remaining 438 referrals. (These 438 included 456 charges because some of the aliens were arrested on different charges more than once during the month.) These referrals involved crimes such as assault, sale of narcotics, and firearms possession.

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NYDO's initial action on these 438 referrals was usually to request the INS file, if any, on the alien, in order to determine what other information was available. We monitored NYDO's follow-up action on each of these referrals. After 8 weeks had elapsed from the date of the final referral, 322 referrals were unresolved (for 309 of these, the only action taken by the investigators was to request the aliens' case files for review); in 41 instances a detainer was issued; 73 referrals were closed, generally because NYDO was not able to locate the alien or the alien was found to be not deportable; and in two cases the aliens were deported.

Potentially deportable aliens
are not always investigated and
apprehended

As of November 20, 1985, NYDO had about 200 cases in which it established that the alien met the criteria for deportation as criminal aliens and/or illegal aliens. These cases were awaiting assignment to investigators as workload permitted. Many cases involved repeat offenders who continued to commit crimes after they were identified as potentially deportable. In some cases, the aliens committed crimes after being deported and subsequently returning to the United States. Of these 200 cases, an estimated 84 percent had been in the files, but unassigned for investigation, for more than 3 months. About 31 percent of the cases were more than a year old. Fifty-eight percent of the cases involved deportable legal aliens, and 42 percent involved illegals. All of the illegal aliens had arrest records, and 61 percent of them had been convicted.

Our analysis of the 200 cases disclosed that, for the most part, the aliens continued to commit crimes after they had come to NYDO's attention and had been determined to be potentially deportable.

Aliens arrested after being identified as potentially
deportable

- 77 percent at least once.
- 45 percent more than once.
- 11 percent five or more times.

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Aliens convicted after being identified as potentially deportable

- 44 percent at least once.
- 23 percent more than once.
- 3 percent five or more times.

Aliens arrested after being deported and returning to the United States

- 10 percent had been deported as illegals, returned to the United States, and were arrested at least once after returning.
- 6 percent had been deported as criminal aliens, returned to the United States, and were arrested at least once after returning.
- 5 percent had been deported twice and were arrested at least once after their second return.

Following are examples of the above cases:

- The alien entered the United States in 1973 and was deported in 1981. He returned and was arrested in January 1985 for possession of stolen property, possession of burglar tools, and auto stripping. The most recent information in NYDO's files indicates that he was released from jail pending a hearing. The district office was not notified before the alien was released.
- The alien entered the United States in 1971. In December 1977, he was convicted of criminal possession of stolen property and sentenced to 1 year in prison. He was deported in September 1978 but returned illegally in October 1981. He was apprehended by INS in Los Angeles and placed on a flight back to his native country. However, in May 1984, he was arrested in the United States for shoplifting. In January 1985, he was arrested and subsequently indicted for possession of stolen property. As of November 1985, a warrant was out for his arrest.
- The alien entered the country legally in June 1978. He became potentially deportable in December 1978 after

being convicted of grand larceny, his second conviction in 2 months. In May 1982, he was arrested for grand larceny and criminal possession of stolen property but failed to appear for a hearing. In December 1984, he was arrested for larceny, criminal possession of a controlled substance, and possession of stolen property. He again failed to appear for a hearing. As of November 1985, warrants for his arrest were outstanding.

--The alien entered the United States legally in March 1967. He became potentially deportable in February 1972 upon conviction for criminal sale and possession of marijuana and was sentenced to 6 months confinement and 2 years special parole. In September 1979, he was convicted of criminal sale of a controlled substance and sentenced to 1-3 years imprisonment. In April 1985, he was convicted of criminal possession of a controlled substance and was sentenced to time served in jail while awaiting case disposition.

THE NEW YORK DISTRICT OFFICE'S
COORDINATION WITH LOCAL LAW
ENFORCEMENT AGENCIES

Two agencies--the New York District Attorney's Office and the New York City Department of Probation--have requested closer coordination with NYDO. Agreements with these agencies might enable NYDO to remove potentially deportable aliens from the criminal justice system soon after their entry into the system or immediately after a conviction resulting in a sentence of probation.

Representatives of the district attorney's office of New York County (Manhattan) told us that in March 1982 their office initiated discussions with NYDO aimed at obtaining its early involvement when an alien was arrested. They proposed that NYDO assign an investigator to the district attorney's office to attempt to persuade arrested aliens to depart the country in lieu of prosecution. NYDO representatives told us that problems could occur if aliens who initially agreed to depart voluntarily changed their minds and fought deportation. NYDO officials also told us that inadequate staff, lack of detention facilities, and a lengthy deportation process were impediments to NYDO's changing its manner of dealing with potentially deportable criminal aliens.

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On February 26, 1986, NYDO and the district attorney's office reached an agreement under which certain aliens who commit crimes will be allowed, as part of a plea bargain, to consent to depart voluntarily from the United States in lieu of incarceration. The district attorney will notify NYDO of arrestees he considers appropriate for deportation, and NYDO will determine the willingness of the aliens to depart. The arrestees will remain in the district attorney's custody until the date of departure, at which time NYDO will assume custody. Those individuals who subsequently refuse to depart are to be returned to the district attorney.

New York City Department of Probation representatives estimate that 20 illegal aliens enter their system each month. They wrote to NYDO on August 30, 1985, and proposed discussions aimed at formulating a cooperative agreement governing the handling of these and potentially deportable criminal aliens. As of January 16, 1986, probation representatives told us that NYDO had not responded to their proposal. The district director told us he did not recall receiving it.

FACTORS LIMITING INVESTIGATIONS
OF CRIMINAL ALIENS

The extent NYDO investigates criminal aliens is limited somewhat by policy and resource considerations. These are:

- INS' investigative priorities which do not establish objectives for the investigation of criminal aliens;
- INS' investigative case management system which encourages efforts to be directed toward the most likely successful investigations;
- a lengthy, backlogged deportation process and overburdened detention facilities which could discourage the apprehension of large numbers of deportable criminal aliens; and
- the number of investigators.

Investigative priorities

In fiscal year 1985, INS' service-wide priorities designated the following as the highest investigative priorities: (1) criminal aliens; (2) major employers of illegal aliens; (3) facilitators

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of immigration fraud schemes; and (4) document, entitlement, and other types of fraud. However, no specific objectives were established for criminal alien investigations as was done for other priority investigations. Accordingly, the majority of investigative work was directed toward other than criminal alien investigations.

The district office's specific objectives in accordance with the priorities were to:

- expend at least 45 percent of productive investigative time on document and entitlement fraud investigations;
- successfully complete 125 employer of illegal alien cases;
- successfully complete 50 immigration fraud scheme cases;
- achieve \$3.3 million in entitlement savings; and
- expend 15 percent of productive investigative time on fraud cases involving individuals.

The percentages of productive investigative time expended in fiscal year 1985 were as follows:

<u>Type of investigation</u>	<u>Percent of productive investigative time</u>
Criminal aliens	16.5
Employers of illegal aliens	19.5
Fraud:	
Immigration fraud schemes	25.4
Alien entitlement fraud	7.9
Individual fraud	<u>15.3</u>
Total fraud	48.6
Other	<u>15.4</u>
Total	<u>100.0</u>

The percentage of productive investigative time devoted to criminal alien investigations in fiscal year 1985 (16.5 percent) is down from 17.9 percent in fiscal year 1984. Service-wide investigative priorities for fiscal year 1986 are about the same as those for fiscal year 1985.

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According to INS representatives, as of February 1986, 27 percent of available agent resources and 21.5 percent of available supervisors in the New York district were dedicated to criminal alien work, thus comparing favorably with the percentages of staff devoted to the other priorities. They further indicated that the 16.5 percent of productive investigative time spent on criminal aliens in fiscal year 1985 did not include the time spent in apprehending abscondee, many of whom were criminal aliens, and in investigating requests for relief from deportation (waivers of deportability) filed by criminal aliens in deportation proceedings.

INS did not separately report investigative time devoted to apprehending abscondee and waivers of deportation as they relate to criminal aliens until fiscal year 1986. In fiscal year 1985, NYDO spent 2.8 percent of investigative time on abscondee and 4.4 percent on waivers of deportation. The portion of these percentages applicable to criminal aliens is unknown. However, in the first 2 months of fiscal year 1986, 1.6 percent of investigative time was spent on these investigations.

Case management system

The INS investigative case management system was implemented in October 1983 and revised in October 1985. Its purpose is to concentrate investigative resources on significant cases that make a measurable contribution to dealing with illegal immigration. INS officials told us that before the development of the case management system, investigations were worked on a first-come, first-serve basis, virtually without regard to their importance or probability of successful outcome.

Under the case management system, all investigative work is divided into three impact levels. Levels I and II contain most of the substantial types of investigations INS conducts: apprehension of criminal aliens, immigration fraud schemes, employment of illegal aliens, and deportable aliens who abscond while on bond. Level III includes functions and activities requiring investigation that are not related to the Immigration and Nationality Act, such as equal employment opportunity investigations.

Case management, a sound concept for focusing investigative resources, for the most part, does not encourage the pursuit of nonincarcerated criminal aliens and is an underlying reason why NYDO's criminal alien investigations concentrates on aliens in

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EIOR judges who preside over judicial proceedings. The district has 13 trial attorneys who represent INS at deportation and other proceedings. Additionally, when the order to show cause is issued, INS is required to provide the alien with a list of organizations that provide free legal counsel.

The NYDO assistant director for detention and deportation told us that the district office operates one major detention facility--the Varick Street Service Processing Center. He said that this facility has a capacity of 225 beds for general detainees and an additional 21 beds for infirmary, maximum security, and families. District officials told us that although most detainees are housed temporarily, the facility is usually at or near capacity. The space problem is compounded by the fact that as of February 1986, 46 beds were occupied by Mariel Cubans. The NYDO also has available for use 50 beds at the Boston Service Processing Center and 10 beds at the Federal Metropolitan Correctional Center. In addition, NYDO contracts for space with the New York City Department of Correction. The Department of Correction must make available up to 210 beds at a cost of \$63.55 per day per detainee. However, if only one bed is used, NYDO must still pay for a minimum of 20 detainees. According to INS officials, this facility has been virtually unused because of the unavailability of funds. The district office also has a contract with the Passaic County jail (50 beds at a cost of \$50 per detainee per day).

The deportation process can be lengthy because of the number of cases that must be heard, the alien's right to claim relief from deportation and the need to investigate those claims, and the alien's right to appeal decisions. As of February 13, 1986, NYDO had 25,943 aliens in various stages of the deportation process. In fiscal year 1985, the eight immigration judges heard over 854 bond matters and completed 8,367 deportation cases. According to the office of the Chief Immigration Judge, any alien released on bond would not be scheduled for his initial deportation hearing for approximately 6 weeks. This office told us that no priority is given to scheduling hearings for criminal aliens released into the community. Also, according to NYDO's assistant director for detention and deportation, nothing is usually decided on the merits of a case at the first hearing. Accordingly, another hearing is scheduled for about 4 months later.

Numerous relief provisions (which take time to resolve) are available to potentially deportable aliens, including those with

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prison. Under the system, the opening of an investigation is governed largely by its probability of success. Accordingly, before a criminal alien case may be opened for investigation, it should meet three criteria:

- INS has been notified by another agency of the alien's conviction;
- an order to show cause is likely to be issued; and
- the alien is likely to be removed from the United States.

The case is considered to be successfully completed when the alien is apprehended and deported.

Cases involving aliens in prison are more likely to meet these criteria than cases involving nonincarcerated aliens because NYDO has assurance that a conviction was obtained. There is, accordingly, a likelihood that the alien is deportable. Furthermore, the alien is in prison and is thus easy to locate. This also affords NYDO sufficient time to develop the information needed to issue an order to show cause.

Detention and deportation

Deportable aliens are entitled to a deportation hearing. According to INS officials, 10 or more months can elapse between the time an alien is apprehended and the time he/she is finally deported. During this period, aliens either remain under INS detention or are released on bond or on their own recognizance. However, attempts are made to expedite hearings for those in detention. Aliens are entitled to bond and are released on bond regularly. Many abscond. A significant increase in apprehensions of criminal aliens would place additional burdens on NYDO's detention facilities and the deportation hearing process and could result in many criminal aliens being released from INS custody and absconding.

The deportation process begins when INS serves the alien with an order to show cause and brings the alien to a detention facility. The district director may release the alien on bond or on the alien's own recognizance or may detain the alien.

According to NYDO's counsel, a date is set by the Executive Office for Immigration Review (EOIR) for a deportation hearing before an immigration judge. In New York, there are eight

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criminal records. For example, section 244(b) of the Immigration and Nationality Act allows a criminal alien to request suspension of deportation on the grounds that he has been in the United States for at least 10 years, is of good moral character, and would suffer exceptional and extremely unusual hardship if deported. If the judge agrees to hear the petition and NYDO opposes it, NYDO may have to make an investigation. A supervisory investigator told us that this could extend the case for another 6 months.

If an alien's application for relief is denied, he can appeal to the EOIR's Board of Immigration Appeals. The chief of NYDO's trial attorney branch estimated this can add 4 months to the process. Additionally, the alien can request judicial review to the U.S. Circuit Court of Appeals and up to the Supreme Court.

Delays in the deportation hearing and appeals process often work in the alien's favor. The alien can marry a U.S. citizen, become a parent, obtain employment, or satisfy the 10-year residency requirement during this process. The alien can then use these activities as grounds to plead for suspension of deportation. The chief trial attorney for NYDO told us that this often happens.

The length of the deportation process, the number of cases to be heard, and the alien's right to bond preclude detention of all but a fraction of the 26,000 aliens who are currently in the process. NYDO representatives told us that many of these, including the criminal element, abscond. A 1984 INS study reported that nationwide 76 percent of the aliens under a final order of deportation absconded, many of them after lengthy appeal procedures that had been resolved in favor of deportation. In fiscal year 1984, NYDO reported 2,757 aliens had absconded. NYDO apprehended 145 of them.

Investigative resources

The district office has the equivalent of about 17 full-time investigators plus 4 supervisors to handle the criminal alien problem in the district. As of September 30, 1985, NYDO had 119 investigators, including supervisors, divided into a special investigations group and a general investigations group. Criminal alien investigations are conducted by three squads of the general investigations group. As of December 1, 1985, these squads included 26 investigators and 4 supervisors. Criminal alien investigations account for about 88 percent of their

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caseload. They also conduct other types of investigations, such as those dealing with waivers of deportability claimed by criminal and other aliens.

In fiscal year 1985, 16.7 staff years, (plus four supervisors) were expended in criminal alien investigations, down from 19.3 staff years (plus four supervisors) in fiscal year 1984. Over the past 3 fiscal years, NYDO's investigative workforce has declined as follows:

	<u>Number of investigators as of September 30</u>		
	<u>1983</u>	<u>1984</u>	<u>1985</u>
Authorized	160	139	139
On duty	145	127	119

Support staff for investigators has remained constant over this period, averaging 22-24 staff. However, a supervisory investigator responsible for criminal alien investigations told us that NYDO does not have sufficient clerical staff. This has resulted in investigators performing many clerical duties such as tracking and obtaining files, searching information systems, and answering phone inquiries and complaints.

ATTRITION OF INVESTIGATORS

During fiscal years 1983-1985, NYDO lost 43 investigators through retirement, separation, removal, resignation, and disability termination. To ascertain the reasons for the investigator attrition we

- attempted to contact the 43 departed investigators to determine their specific reasons for leaving NYDO, and
- analyzed grievances brought by NYDO investigators and unfair labor practice complaints made by the employees' union in fiscal years 1983-1985.

NYDO's investigator attrition rate has been among the highest of all district offices in the Eastern Region as follows:

Efforts to Apprehend Criminal AliensAttrition rate

<u>District office</u>	<u>Fiscal year</u>		
	<u>1983</u>	<u>1984</u>	<u>1985</u>
Baltimore	0	0	0
Boston	0	5.4	5.0
Buffalo	0	0	14.3
Hartford	0	0	0
Newark	5.4	5.8	6.1
New York	7.2	13.2	11.4
Philadelphia	5.3	5.6	0
Portland	0	22.2	0
San Juan	0	5.3	0
Washington, D.C.	0	10.8	22.9

According to NYDO investigative managers, the 43 investigators who left NYDO were generally experienced, good-performing investigators. We were able to interview by telephone 33 of the 43. Each of the 33 had at least 5 years experience as a criminal investigator, and about 58 percent had at least 10 years experience. All but one had received at least one performance-related award during their employment at NYDO.

Of the 33, six retired mandatorily or because of disability. Another seven retired voluntarily; three of these stated that at least one of their reasons for retiring involved age discrimination. Eighteen of the 33 transferred to other agencies or jobs, two at pay higher than they were receiving at INS. Fourteen of these 18 told us that their primary reason for leaving NYDO involved friction with management such as disagreement with management's methods of operating the district office or the belief that management did not place enough emphasis on enforcement activities. Two of the 33 were fired.

Under the grievance procedure established between INS and the National Immigration and Naturalization Service Council, which represents employees, the employee first discusses the grievance with his supervisor. If not resolved, the grievance is formally filed with the district director, then with the assistant regional commissioner for management, and finally, if necessary, it is submitted to an independent arbitrator.

APPENDIX I
Efforts to Apprehend Criminal Aliens

In fiscal years 1983-1985, NYDO investigators filed 20 grievances, 14 of which were not submitted to arbitration. The grievances generally involved matters such as leave, changes in working conditions such as tours of duty, and discipline. INS officials told us that the grievance experience in NYDO was similar to that in other district offices. The following table summarizes the disposition of grievances.

<u>Grievances</u>	
<u>Disposition</u>	<u>Number</u>
Not Submitted to arbitration:	
Grievance withdrawn	9
Closed without resolution because of unreasonable delay	3
Resolved in grievant's favor	<u>2</u> 14
Submitted to arbitration:	
Resolved in agency's favor	2
Resolved in grievant's favor	1
Resolved partially in favor of agency and grievant	1
Dismissed by arbitrator	1
Pending as of September 30, 1985	<u>1</u> <u>6</u>
Total	20

Additionally, during the 3 fiscal years, the employees' union filed 12 unfair labor practices. Two were withdrawn by the union and 9 were dismissed by the Federal Labor Relations Authority. The Authority recognized one as an unfair labor practice for which it proposed a settlement agreement.

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