United States General Accounting Office

GAO

Testimony

Before the Immigration and Claims Subcommittee
Committee on the Judiciary
House of Representatives

For Release on Delivery
Expected at 9:30 a.m. EST
February 25, 1999

CRIMINAL ALIENS

INS' Efforts to Identify and Remove Imprisoned Aliens Continue to Need Improvement

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GAO/T-GGD-99-47

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss the Immigration and Naturalization Service's (INS) efforts to initiate and complete removal proceedings[1] for criminal aliens in state and federal prisons through its Institutional Hearing Program (IHP).[2] The IHP is a cooperative program involving the INS, the Executive Office of Immigration Review (EOIR), and federal and state correctional agencies. It was formally established in 1988 to enable INS and EOIR to complete removal proceedings for criminal aliens while they were still serving their sentences, thus eliminating the need for INS agents to locate the aliens after their release, and freeing up INS detention space for other cases. With the proceedings complete, expeditious removal of criminal aliens upon completion of their sentences can occur. Federal law requires the Attorney General to initiate and, to the extent possible, complete removal proceedings for aggravated felons before their release from incarceration. INS has been delegated the authority to enforce the immigration laws.

In 1997, we reported to this Subcommittee that the Immigration and Naturalization Service (INS) needed to improve its efforts to identify potentially deportable criminal aliens in federal and state prisons and complete the IHP for these aliens before they were released.[3] We based this conclusion on our analysis of data provided by the Federal Bureau of Prisons (BOP) and five states[4] on foreign-born inmates who were released from their prison systems between April and September, 1995.

INS' Executive Associate Commissioner for Programs told the Subcommittee that INS had improved program operations since 1995. In response, the Subcommittee asked us to review program performance

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

[2]In June 1998, the IHP was subsumed under a broader program called the Institutional Removal Program (IRP). The IRP is to capture data for all removals that originate in an institutional setting, including the IHP, reinstatements of prior final removal orders, and administrative removal orders. During the period covered by our review, the IRP was proposed but not official. Therefore, this testimony provides information almost exclusively on IHP performance.

[3] Criminal Aliens: INS' Efforts to Identify and Remove Imprisoned Aliens Need to Be Improved (GAO/T-GGD-97-154, July 15, 1997).

[4] The five states were Arizona, California, Florida, New York, and Texas.

during 1997. Our report in response to that request[5] was based on foreign-born inmates released from BOP and four states' prisons between January and June, 1997.[6]

Although our results indicated that INS' performance had shown some improvement, we continue to have several of the same concerns about the IHP. In 1997, INS still had not identified many potentially deportable aliens while they were in prison. The majority of these released criminal aliens were aggravated felons, some of whom were reconvicted for new felonies. INS completed the IHP for about half of the released criminal aliens it identified as potentially deportable while they were in prison. Because INS had to detain aliens who did not complete the hearing process in prison, INS incurred approximately $40 million in avoidable detention costs. In addition, INS had not fully implemented the recommendations we made in our 1997 report to improve the IHP.

INS Still Failed to Identify All Deportable Criminal Aliens, Including Aggravated Felons

As was the case when we reported to this Subcommittee in July 1997, we again found that INS had not identified all potentially deportable imprisoned criminal aliens. As a result, INS did not fully comply with the legal requirements that it (1) place criminal aliens who had committed aggravated felonies in removal proceedings while they are incarcerated or (2) take those aggravated felons into custody upon their release from prison.

In 1995, INS' database of deportable aliens did not have records on about 34 percent (5,884 of 17,320) of the released inmates included in our analysis who had been identified by the states and BOP as foreign born. About 32 percent of these (1,899) were subsequently determined by INS' Law Enforcement Support Center (LESC) to be potentially deportable criminal aliens.

In 1997, INS had no records on 36 percent of such aliens (7,144 of 19,639), of whom 27 percent (1,903) were determined by LESC to be potentially deportable criminal aliens. Although some of these inmates were citizens and some were ordered removed through means other than IHP, a substantial number were aliens on whom INS did not have records.

[5] Criminal Aliens: INS' Efforts to Remove Imprisoned Aliens Continue to Need Imp0rovement (GAO/GGD-99-3).

[6] We eliminated Arizona from our current study because the Subcommittee request letter specified that we focus on BOP and the four selected states. Arizona accounted for a small number (626 of 17,320) of the total cases in our 1995 analysis.

In 1995, about 33 percent (635) of these potentially deportable criminal aliens for whom INS did not have records were aggravated felons at the time of the analysis, as determined by LESC. In our analysis of 1997 data, 63 percent (1,198) of the potentially deportable criminal aliens for whom INS did not have records were identified by LESC as being aggravated felons. According to INS, this increase may be due to the additional crimes classified as aggravated felonies in the 1996 Act. This is important because federal law requires INS to initiate removal proceedings for aggravated felons while they are incarcerated and, to the extent possible, complete deportation proceedings for these felons before their release from prison.

According to the INS and EOIR databases, none of the 1,903 potentially deportable criminal aliens had been in removal proceedings while they were in prison or afterward, had been taken into INS custody, or had been deported. LESC provided information on the post-release criminal activities of the 1,198 aggravated felons as follows:

- 80 of the 1,198 criminal aliens were rearrested,
- 19 of the 80 aliens were charged with committing additional felonies, and
- 15 of the 19 were convicted of the felony charges.

We asked LESC to provide us with information on the nature of the crimes for which the 80 criminal aliens were rearrested. These included crimes such as assault, robbery, and drug offenses. The types of felonies for which the 15 aliens were convicted included crimes mostly involving drug possession, burglary, theft, and robbery.

INS Did Not Complete the IHP For About Half of the Released Criminal Aliens, Incurring Millions in Avoidable Detention Costs

Our analysis of data from the first 6 months of 1997 revealed that 12,495 released inmates were, according to INS and EOIR databases, potentially deportable.[7] We found that about 45 percent of these inmates were released from prison with a final deportation order (having completed the IHP), about 3 percent were released from prison without a deportation order but with INS' having completed the removal hearing process, and about 36 percent were released from prison before INS completed the process. For the remaining 15 percent[8] of inmates, there was no indication that hearings were completed either before or after prison release. In

[7] INS' data on the IHP were limited because INS had not identified all individuals who were foreign-born inmates in the BOP and state prison systems and did not maintain a database of these individuals that would enable it to routinely track the IHP status of all potentially deportable inmates. Therefore, as was the case in fiscal year 1995, INS could not readily determine where individuals were in the IHP process, nor could it readily provide summary information on the number of criminal aliens who had committed aggravated felonies.

[8] Numbers do not sum to 100 percent due to rounding.

comparison, our analysis of data for a 6-month period in 1995 revealed that 40 percent of 11,436 potentially deportable released inmates completed the IHP with a final deportation order, 3 percent completed the IHP with no deportation order, and 41 percent were released from prison before INS completed the process. There was no evidence of hearings being completed for the remaining 16 percent.

Not completing removal proceedings during incarceration means that INS has to use its limited detention space to house released criminal aliens rather than using the space to detain other aliens. INS has acknowledged that it incurs detention costs for housing these aliens; costs that our analyses showed could be avoided. Our analysis of fiscal year 1995 data showed that detention costs of about $37 million could have been avoided for criminal aliens who completed the hearing process after prison release and were deported within 9 months of release. Our analysis of fiscal year 1997 data showed that INS could have avoided over $40 million in detention costs for such cases. At least some of the savings in detention costs that INS could realize by processing more criminal aliens through the IHP would be offset by any additional funding that might be required to provide additional resources for the IHP.

INS Has Not Fully Implemented Our Recommendations

At the 1997 hearing, the Chairman urged INS to fully implement GAO's recommendations for improving the IHP. As of July 1998, INS had made limited progress in doing so.

Nationwide Database

We stated in our July 1997 testimony that INS needed better information about prison inmates--more specifically, information about which inmates are eligible for the IHP and which of these inmates have been and have not been included in the program. Our work at that time showed that INS' databases did not contain complete and current information on the IHP status of individual foreign-born inmates at any given point in time. INS could use this information to determine which of the released foreign-born inmates had been screened for the IHP, identified as deportable, or placed in the hearing process. We recommended that the Commissioner of INS establish a nationwide data system containing the universe of foreign-born inmates reported to INS by BOP and the state departments of corrections and use this system to track the IHP status of each inmate. As of September 1998, INS had begun to establish an automated system for tracking potentially deportable criminal aliens in BOP facilities, but it had not determined whether it will be able to use this system to track potentially deportable criminal aliens in state prison systems.

Controls to Ensure That Proceedings For Aggravated Felons Are Initiated Before Prison Release

The law requires INS to take certain actions regarding criminal aliens who have been convicted of aggravated felonies beyond those actions required for other criminal aliens. As previously mentioned, INS is required by law to initiate and, to the extent possible, complete removal proceedings against aggravated felons while they are incarcerated and to take these felons into custody upon their release. Our work shows, as it did in July 1997, that INS had not complied fully with the required provisions of the law. In 1997, we recommended that the Commissioner of INS give priority to aliens serving time for aggravated felonies by establishing controls to ensure that these aliens (1) are identified from among the universe of foreign-born inmates provided by BOP and the states, (2) are placed into removal proceedings while in prison, and (3) are taken into custody upon their release. By September 1998, INS had not taken specific actions to ensure that aggravated felons are placed in removal proceedings while they are incarcerated and then taken into custody upon their release from prison. In its May 1998 performance review, INS stated that priority is given to aliens with early release dates—as opposed to aggravated felons—to ensure that deportable aliens are not released into the community.

Resource Issues

We previously reported to this Subcommittee that INS had established IHP performance goals without having a systematic basis for determining the performance results it could accomplish with various resource levels. We reported that INS had not developed a uniform method for projecting the resources it would need--taking into consideration the level of cooperation from BOP and the states--to achieve its overall goal of completing removal proceedings for every eligible foreign-born inmate before release from prison. We recommended that the Commissioner of INS (1) develop a workload analysis model to identify the IHP resources needed in any period to achieve overall program goals and the portion of those goals that would be achievable with alternative levels of resources and (2) use the model to support its IHP funding and staffing requests. Such a model was to consider several factors, including the number of foreign-born inmates, number of prisons that must be visited, number and types of IHP staff, length of time to process cases, and travel time and costs. We also reported in our July 1997 testimony that INS had a 30-percent attrition rate for immigration agents, which was significantly higher than the 11-percent average attrition rate for all INS staff. We recommended that the Commissioner identify the causes of immigration agent attrition and take steps to ensure that staffing was adequate to achieve IHP program goals. INS completed a draft workload analysis model in June 1998 that IHP managers intend to use to determine what resources are needed to accomplish program goals. INS had not resolved the problem of high

attrition among immigration agents, who are considered the backbone of the IHP.

Better Management Oversight

We reported to this Subcommittee in July 1997 that INS' top management (1) had not formally communicated to the district directors how additional staff (e.g., newly hired immigration agents) should be used in the IHP, (2) did not ensure that specific operational goals were established for each INS district director with IHP responsibilities, and (3) did not respond with specific corrective actions when it became apparent that the program would not achieve its goals for fiscal year 1996.

Therefore, we recommended that INS establish and effectively communicate a clear policy on the role of special agents in the IHP (e.g., whether immigration agents were replacements for or supplements to special agents). We also said that INS should use a workload analysis model to set IHP goals for district directors with IHP responsibilities. Furthermore, we said that if it appeared that IHP goals would not be met, INS should document actions taken to correct the problem.

However, our work last year showed that INS had not (1) clarified whether immigration agents were replacements for or supplements to special agents in doing IHP work, (2) set IHP goals for district directors in either fiscal years 1997 or 1998 and for regional directors in fiscal year 1998, and (3) specifically addressed the recommendation to document actions taken by the agency when it appeared that the IHP goals would not be met.

Conclusions

Despite its assertions at last year's hearing, INS generally showed limited improvement in its IHP performance based on our analysis of INS' 1997 program performance. This, coupled with INS' slow response to our recommendations, suggests that INS still does not know whether it has identified all potentially deportable criminal aliens in the BOP and state prison systems. More importantly, INS still is not doing all it should to ensure that it is initiating removal proceedings for aggravated felons and taking them into custody upon their release from prison.

We continue to believe that the recommendations we made in our 1997 testimony are valid and that INS should fully implement them as soon as possible.

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

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