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DEPARTMENT OF CORRECTIONAL SERVICES

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**AN OVERVIEW OF
IMMIGRATION AND DEPORTATION PROCEDURES
IN THE NEW YORK STATE
DEPARTMENT OF CORRECTIONAL SERVICES**

EXECUTIVE SUMMARY

The criminal alien sub-group of the New York State prison population has received increasing attention over the past few years. In addition to policy and operational questions raised at the facility level of the New York State Department of Correctional Services the executive, legislative, and judicial branches of New York's state government have also generated numerous inquiries about the Department's foreign-born prison population.

This report has been prepared in response to these requests for information. It presents, in descriptive form, the procedures that have been established by the Department to identify and track foreign-born inmates, and to assist the Federal government in identifying and removing excludable and deportable criminal aliens.

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INTRODUCTION

The criminal alien sub-group of the New York State prison population has received increasing attention over the past few years. In addition to policy and operational questions raised at the facility level of the New York State Department of Correctional Services (herein referred to as the Department), the executive, legislative, and judicial branches of New York's state government have also generated numerous inquiries about the Department's foreign-born prison population.

This report has been prepared in response to these requests for information. It presents, in descriptive form, the procedures that have been established by the Department to identify and track foreign-born inmates, and to assist the Federal government in identifying and removing excludable and deportable criminal aliens.

Before proceeding with a discussion of incarcerated criminal aliens or deportation proceedings, it will be useful to provide an overview of the two federal agencies that the Department routinely interacts with on foreign-born inmate issues. These two agencies, which are organizational components within the United States Department of Justice, are the United States Immigration and Naturalization Service (INS) and the Executive Office For Immigration Review (EOIR).

INS is the federal agency that has primary responsibility for the enforcement of the United States Immigration Law. It is headed by a commissioner, and has a Central Office in Washington, D.C. which develops policy and regulations.

The Central Office is organized into a number of functional units. For example, there is a General Counsel that handles litigation and provides the Commissioner with legal advice. Other units include enforcement (responsible for the apprehension of illegal aliens, border security, investigations of criminal and administrative violations of the immigration laws, and alien removal), examinations (the inspection of aliens at ports of entry and adjudication of applications for benefits in the United States), and management (the coordination of administrative activities involving personnel, training, and administrative support).

In addition to the Central Office, there are four regional offices (Northern, Southern, Eastern, and Western) that oversee the activities of several District Offices and District Sub-Offices. The District Offices and Sub-Offices are the principal means of contact between aliens or their representatives and INS. The District and Sub-Offices are also the principal means of contact between the Department and INS. Both the Regional and District Offices are sub-divided into a number of functional units that are organized into functional units analogous to those in the Central Office.

In New York State, there are two INS district offices; the Buffalo District Office and the New York City District Office. Each district office is responsible for investigating and processing inmates incarcerated in Department facilities within the district's jurisdiction. The Buffalo District Office also has a sub-office in Albany to which a group of Department facilities has been assigned. (See Appendix A for a list of Department facilities in each INS district).

The Department most frequently deals with two units of INS; the Investigations Unit and the Detention and Deportation unit. The Investigations Unit is the Department's primary source of identifying information concerning aliens. It is the Investigations Unit that develops evidence to build cases to initiate deportation proceedings against aliens. The Detention and Deportation Unit picks up prisoners with detainers or

deportation orders from the Department's correctional facilities upon their release. This unit also handles the case through the remainder of the hearing process and enforces the order to remove the alien from the United States.

Prior to 1983, the Immigration Court was an organizational component of INS. Judicial functions (e.g., deportation and exclusion hearings) related to immigration were conducted by the Special Inquiry Officers, a unit within INS. In 1983, the Executive Office for Immigration Review was created by the United States Attorney General in order to separate the judicial functions of the Immigration Law from the operational functions performed by INS. The Criminal Alien Unit in the Office of the Chief Immigration Judge has national responsibility for the coordination and case management functions of the Alien Criminal Apprehension program. There are 21 field offices throughout the United States. The Management Officer and staff of the New York City field office have administrative control over the Alien Criminal Apprehension program in New York State.¹

CRIMINAL ALIENS SENTENCED TO STATE PRISON

When a new inmate is received at one of the Department's reception center facilities, the inmate undergoes a pre-classification booking. At this time, the inmate's place of birth is among the information collected. If the inmate's place of birth is other than the United States or one of its possessions (e.g., Puerto Rico), a foreign-born inmate record is created.

During this record initiation phase, the Inmate Records Coordinator (IRC) must manually prepare a federal G-340 form for each inmate identified as foreign-born. The form is sent to the INS field office serving that prison's area as an official notification that the Department may have a criminal alien in custody. It should be noted that the Department is required by New York State Correction Law, Section 147, to notify INS that an alien prisoner is under custody, within three months after such prisoner's admission to the Department.

Upon notification that the Department may have a criminal alien under custody, INS field agents begin an investigation to determine the immigration status of the inmate. This investigation may also lead to the lodging of a detainer against the inmate and the initiation of deportation proceedings. Typically, INS investigations are begun within the first two weeks of an inmate's reception and preliminary interviews with inmates are held by INS field investigators at the reception centers. The New York District Office has field investigators assigned to the Ulster and Downstate Reception Centers and are provided with office space at those correctional facilities.

The Department maintains automated records for all inmates placed under its custody and maintains an automated alien record for all foreign-born inmates. (See Appendix B for a sample of the Alien Record Screen). The alien record contains the date that the federal G-340 form was sent to the INS district office as well as data areas for INS I-247 and deportation information.

1.

For more information on the structure of INS and EOIR see Richard D. Steel. **Steel On Immigration Law.** Rochester, New York: The Lawyers Co-Operative Publishing Company, 1985.

The INS form I-247 is a dual purpose "Notice Of Action and Detainer" form. The four types of action that are reported on this form are as follows:

- 1.) Investigation has been initiated to determine whether this person is subject to deportation from the U.S.
- 2.) An Order to Show Cause in deportation proceedings was served on _____, 19____.
- 3.) A warrant of arrest in deportation proceedings served on _____, 19____.
- 4.) Deportation from the United States has been ordered.

Information is placed in the I-247 data area only if an I-247 form has been received from INS. While INS investigations that begin at Department reception center facilities technically initiate the investigation process, the status of the investigation is not known to the Department until an I-247 form is issued.

For example, based upon an initial interview with an alleged foreign-born inmate by INS field investigators it may be established that the inmate is indeed an alien. However, additional investigation of the alien's INS records may reveal that the alien is not deportable (i.e., the crime for which the alien is incarcerated may not render that alien deportable or the conviction is on direct appeal). In such a case, INS may choose not to pursue the case any further and would have no need to issue an I-247.

In contrast, had a continued investigation revealed that the alien under the Department's custody may be deportable, then INS would issue an I-247 to inform the Department that an investigation was under way to determine whether deportation proceedings would be initiated against the inmate. It is the I-247 form then, that establishes the **formal** action to be taken by INS against a particular inmate. For this reason, an "investigation initiated" code would not be entered in this data area unless an I-247 form was received from INS, despite the fact that an investigation had actually been initiated at reception. This is an important point, for the New York City District Office of INS does not issue an I-247 form unless an order to show cause is going to be served.

In order to keep the district offices of INS informed as to the location of foreign-born inmates in the New York State prison system, the Department's Division of Program Planning, Research and Evaluation sends a master list of foreign-born inmates currently under custody to INS on a quarterly basis. In return, the district offices of INS provide the Department with information concerning the alien's immigration status and alien registration number. This information exchange allows the Department to verify and update information contained in its automated data base for foreign-born inmates.

The importance of information exchange between INS and the Department can be illustrated through the file transfer problem. Simply stated, file transfer problem can be defined as a problem involving the transfer of files maintained by an organization, that contain information about an individual serviced by that organization, which follow that individual when they move from one geographical location to another. The file transfer problem is sometimes referred to as the "traveling file syndrome" within the Department and refers to problems associated with locating and transferring a file. The "traveling file syndrome" is a function of record maintenance procedures.

To better understand the record maintenance procedure that gives rise to the "traveling file syndrome", a limited analogy can be made to the Department's procedures in maintaining inmate files. For example, when an inmate is moved from one facility to another, the inmate file follows the inmate to the new facility. The same is true of INS record maintenance. When an alien moves from one INS district to another, the alien file follows the alien to the new INS district if the new district requests the file. Hence, both the Department and INS use a "traveling file" procedure for maintaining records.

However, there are two important differences between INS files and Department files. First, the Department has complete control over the physical location of an inmate. Therefore, it is possible to send an inmate file with the inmate as they travel from one location to another, or, at a minimum, transfer files in a timely fashion if simultaneous transfer is not possible.

In contrast, INS does not have the same degree of control over an alien's location as the Department has over an inmate's location. Moreover, an alien's file is not transferred unless one INS district office or sub-office requests the transfer of the alien's file from its last location. Since files do not follow an alien unless needed by the new district office or sub-office, locating a file when it is needed can be a time consuming process.

To illustrate the problem, consider the following example. Assume that an alien male entered the United States when he was seven years of age and is now, at the age of twenty-three a legal permanent resident. A recent felony conviction has resulted in the alien being sentenced to the custody of the Department and INS has been notified of his incarceration. A preliminary investigation conducted by an INS field investigator from the New York City District Office reveals that the alien entered the United States in 1984 through the port of Miami, Florida. The field investigator then contacts the INS district office in Miami and learns that the file was not actively used since 1985 and was, therefore, sent to a regional file repository. The field investigator must then contact the regional file repository and formally request the file. The regional repository must then physically locate the file and send it to the New York City District Office. Needless to say, the number of alien files generated by INS greatly exceeds the number of files generated by the Department. Therefore, the file location process for INS can be quite time consuming, and in the foregoing example it may take six to eight months before the New York City District Office receives the requested file.

Another difference between INS alien files and Department inmate files centers on the maintenance of a central file backup system. The Department maintains a copy of inmate files at its Central Office location. In the event that a traveling inmate file is lost or destroyed, a reasonably complete record of the inmate's institutional, legal, and personal history can be reconstructed with little problem. Moreover, the Department maintains an extensive automated record maintenance system that includes a significant amount of the information contained in the traveling file and allows for the rapid retrieval of this information.

Unfortunately, INS files in transit cannot be so easily reconstructed if lost or destroyed. INS does not maintain a duplicate file at the central office level. In addition, the automated record maintenance system of INS does not replicate the full set of information contained in the file. In summation, the alien file maintenance system employed by INS has certain characteristics that make the file transfer system a problem under certain circumstances.

With regard to incarcerated criminal aliens, file transfer tends to be a problem when inmates are transferred from a facility in one INS district office jurisdiction to another. It must be remembered that New York State has two INS district offices: one located in Buffalo (with a sub-office in Albany) and one in New York City. Therefore, when a criminal alien inmate is transferred from a facility in one INS district office area to another, the INS alien file only follows the criminal alien to the new district if it is requested by the new district; the file does not automatically follow the alien.

It is essential, therefore, that the Department keep INS informed of the location of criminal alien inmates who are under the Department's custody. While location information cannot eliminate the "traveling file syndrome", this Departmental action is intended to minimize the INS file location problem for criminal aliens incarcerated in the New York State prison system.

DEPORTATION OF CRIMINAL ALIENS

Since 1986, the Department has been working with the Executive Office For Immigration Review and the U.S. Immigration and Naturalization Service to conduct deportation proceedings against incarcerated criminal aliens under a program entitled the Alien Criminal Apprehension Program (ACAP). Under ACAP, EOIR assigns Immigration Judges to hear deportation cases prepared by INS attorneys. These deportation proceedings are currently conducted for one week every other at the Downstate Correctional Facility in Fishkill, New York.

A typical deportation hearing is comprised of an immigration judge, a management officer from the New York City office of EOIR, a translator if necessary, INS prosecuting attorneys, an alien inmate facing deportation charges, and the alien inmate's paid legal, or pro bono (unpaid volunteer) representative. Depending upon the complexity of the case and whether the hearing is an initial hearing or subsequent hearing, a hearing can be as short as 5 minutes, or as long as three hours.

During a typical deportation hearing week, hearings are scheduled from Monday through Friday. Hearing sessions are scheduled between 9 A.M. and noon for the morning session, and 1 P.M. to 5 P.M. for the afternoon session.

In an effort to simplify the transportation of alien inmates from their owning facilities to Downstate Correctional Facility EOIR groups the Department's male facilities into four regions: North, Central, West, and East/South. On Mondays, inmates from the female facilities and the Northern region inmates are scheduled; the Central region inmates are scheduled for Tuesday; the Western region on Wednesday; and the Southern region on Thursday. Fridays are reserved for cases that could not be disposed of during the previous four days.

The Department maintains automated records for inmates processed under the Alien Criminal Apprehension program. The Alien Record Screen on the Department's mainframe computer (see Appendix B) is maintained and updated by the Division of Program Planning, Research and Evaluation in Central Office. A descriptive analysis of the characteristics of inmates who have been processed through the Alien Criminal Apprehension program is available in another Department report entitled "A Descriptive Analysis of the Criminal Alien Program".

Throughout the course of the Alien Criminal Apprehension program, there has been discussion of expanding the program in two ways. First, it has been suggested that deportation hearings for criminal aliens might be established at a second correctional facility located within INS's Buffalo District. Second, the use of telephonic hearings has been considered as a means of expediting the hearing process and reducing transportation costs associated with moving inmates from their owning facility to the hearing site.

Although neither of these proposals has been implemented to date, the viability of the proposals is routinely reconsidered by EOIR, INS, and the Department. In the following paragraphs, details of the proposal, and the reasons for not implementing them will be discussed.

Telephonic Hearings

The use of telephonic hearings for the Alien Criminal Apprehension program was first proposed by the Executive Office For Immigration Review in its annual meeting with Department representatives in January 1989. A telephonic hearing is a simply a hearing conducted via telephone. For example, an im-

migration judge located in New York City would conduct a hearing over the phone with an inmate, the inmate's attorney (if any), and INS attorneys. EOIR currently uses this procedure in New York State where the alien is not incarcerated.

The primary benefit of telephonic hearings was thought to be the minimization of transportation costs associated with moving inmates from their owning facility to the Downstate Correctional Facility where the deportation hearings are held. However, upon closer examination, it did not appear that the Department would realize a significant savings (if any) for several reasons.

First, an examination of the location of owning facilities of inmates who had hearings in March 1989 revealed that the majority of inmates were transported from facilities located in the downstate area. Therefore, the overall savings in terms of transportation did not appear to be as substantial as first thought.

Second, the implementation and routine operation of telephonic hearings would require an initial expenditure for hardware (e.g., speakers, wire, connectors, etc.). Unfortunately, as a result of state budgetary constraints at the time, start-up costs associated with such an operation would likely have over-extended already strained Departmental resources.

Finally, the use of telephonic hearings would require an increase in the number of staff and facilities that would be directly involved in the deportation hearing process, thereby increasing the complexity of administering ACAP. Again, the administrative costs were considered prohibitive given the fiscal constraints of the Department.

In summation, the telephonic hearing proposal was given very serious consideration by the Department. However, smaller than expected savings on inmate transportation, fiscal constraints, and problems of administrative resource allocation dictated that the telephonic hearing proposal be rejected at the time.

The Buffalo District As An Additional Deportation Hearing Site

The issue of hearing sites has been on the agenda at virtually every annual meeting between EOIR and Department representatives since the inception of the Alien Criminal Apprehension program. Chief Immigration Judge William Robie explained that one of the purposes of the Alien Criminal Apprehension program was to centralize special immigration hearings at limited sites. Since immigration judges are assigned to the New York Alien Criminal Apprehension program from the New York City field office of EOIR, the ideal hearing site would be one that was reasonably close to New York. Clearly, that requirement explains the initial selection of Downstate Correctional Facility and the elimination of facilities proximate to the Buffalo metropolitan area.

Centralization of ACAP was emphasized by EOIR for a very basic reason. The Alien Criminal Apprehension program was designed to be a model program upon which criminal alien deportation programs in other states would be based. Centralization minimized start up costs, and simplified administrative, procedural, and logistical problems. In addition, proximity to resources concentrated in New York City allowed both EOIR and INS more flexibility in developing responses to unanticipated problems.

For example, U.S. immigration law allows for an alien to be represented during a deportation hearing, although the government is not required to pay for such representation. Since many criminal aliens lack the financial resources to obtain private counsel, they are forced to rely on pro bono representatives or represent themselves. If the alien does not obtain representation within a reasonable (judicially determined) period of time, exclusion or deportation proceedings can go forward. To date there has been only one regular pro bono group routinely available to represent criminal aliens incarcerated in Department facilities. If the services of this group were lost or reduced, there would likely be a noticeable decrease in the efficiency of the deportation hearing process. EOIR continues to pursue potential pro bono sources.

The primary reason for this dearth of pro bono representatives is economic; there simply isn't enough interest or expertise in dealing with this unique group of aliens. Adding another hearing site in the Buffalo area would require significant efforts by EOIR to secure inmate representation. Since the degree of involvement of pro bono representatives is perceived to be directly related to the efficient processing of cases EOIR has been wary of establishing an additional site for the ACAP program in New York State in the absence of the resources required for program start-up. The possible addition of a second program site would also raise operational and fiscal issues for the Department.

Implications Of The ACAP Proposals

The use of telephonic hearings and the addition of a deportation hearing site in the INS Buffalo District would have the apparent effect of fixing the location of a criminal alien inmate in either the Buffalo or New York City INS District. Both proposals would reduce the need to move inmates for processing through ACAP. It has been suggested that implementation of these proposals would have the effect of reducing the file transfer problems noted by INS.

However, since the movement of criminal alien inmates is only partially attributable to deportation hearings, it is questionable whether the establishment of Buffalo as a deportation site for the Alien Criminal Apprehension program or the development of telephonic hearings would have any significant effect on the INS file location problem. Regardless of the reason for an inmate being transferred from one INS district to another, INS investigative and clerical resources are likely to be a greater determinant of the file location problems than inmate movement. Therefore, both the Buffalo and New York City INS district offices are likely to experience the file location problems for the foreseeable future.

CONCLUSION

The foreign-born under custody population of the New York State Department of Correctional Services has been the source of much interest both from within the Department and from external organizations. Because immigration matters are a federal responsibility, the Department routinely interacts with two federal agencies (INS and EOIR) that have a role in the deportation of aliens.

The Department provides information to, as well as receives information from INS and EOIR in a cooperative arrangement that has proven to be beneficial to all three organizations. The cooperation between these organizations has not only produced a relatively efficient procedure for information exchange, it has resulted in a model program (i.e., a generalizable framework) for initiating deportation proceedings against incarcerated criminal aliens.

Although current operational procedures facilitate information exchange among the three agencies as well as the processing of criminal aliens under United States Immigration Law, these procedures are routinely reviewed by administrators in each of these agencies. New procedures, such as the use of telephonic hearings, are examined and the costs and benefits of the procedure are carefully weighed.

Finally, decisions regarding the implementation of new procedures are always subject to future reassessment because the operational environment in which each agency functions is dynamic. Each agency acknowledges that the needs of the environment in which they function may vary over time and periodic review of policies and procedures is essential to ensure that those needs are effectively addressed.

APPENDIX A

LISTING OF DEPARTMENT FACILITIES BY INS JURISDICTION

INS JURISDICTION:

BUFFALO DISTRICT:

ALBANY SUB-OFFICE:

COXSACKIE CORRECTIONAL FACILITY
GREAT MEADOW CORRECTIONAL FACILITY
GREENE CORRECTIONAL FACILITY
HUDSON CORRECTIONAL FACILITY
JOHNSTOWN A.S.A.C.T.C.
MARCY CORRECTIONAL FACILITY
MIDSTATE CORRECTIONAL FACILITY
MOHAWK CORRECTIONAL FACILITY
MT. MCGREGOR CORRECTIONAL FACILITY
ONEIDA CORRECTIONAL FACILITY
SUMMIT CORRECTIONAL FACILITY
WASHINGTON CORRECTIONAL FACILITY

BUFFALO OFFICE:

ADIRONDACK CORRECTIONAL FACILITY
ALBION CORRECTIONAL FACILITY
ALTONA CORRECTIONAL FACILITY
ATTICA CORRECTIONAL FACILITY
AUBURN CORRECTIONAL FACILITY
BARE HILL CORRECTIONAL FACILITY
BUTLER CORRECTIONAL FACILITY
CAMP GABRIELS CORRECTIONAL FACILITY
CAYUGA CORRECTIONAL FACILITY
CHATEAUGAY A.S.A.C.T.C.
CLINTON CORRECTIONAL FACILITY
COLLINS CORRECTIONAL FACILITY
ELMIRA CORRECTIONAL FACILITY
FRANKLIN CORRECTIONAL FACILITY
GOUVERNEUR CORRECTIONAL FACILITY
GROVELAND CORRECTIONAL FACILITY
LAKEVIEW CORRECTIONAL FACILITY
LIVINGSTON CORRECTIONAL FACILITY
MONTEREY CORRECTIONAL FACILITY
MORIAH CORRECTIONAL FACILITY
OGDENSBURG CORRECTIONAL FACILITY
ORLEANS CORRECTIONAL FACILITY
ROCHESTER CORRECTIONAL FACILITY
SOUTHPORT CORRECTIONAL FACILITY
WATERTOWN CORRECTIONAL FACILITY
WENDE CORRECTIONAL FACILITY
WYOMING CORRECTIONAL FACILITY

**LISTING OF DEPARTMENT FACILITIES BY INS JURISDICTION
CONTINUED**

INS JURISDICTION:

NEW YORK CITY DISTRICT:

ARTHUR KILL CORRECTIONAL FACILITY
BAYVIEW CORRECTIONAL FACILITY
BEDFORD HILLS CORRECTIONAL FACILITY
DOWNSTATE CORRECTIONAL FACILITY
EASTERN CORRECTIONAL FACILITY
EDGECOMBE CORRECTIONAL FACILITY
FISHKILL CORRECTIONAL FACILITY
FULTON CORRECTIONAL FACILITY
GREEN HAVEN CORRECTIONAL FACILITY
LINCOLN CORRECTIONAL FACILITY
MID-ORANGE CORRECTIONAL FACILITY
OTISVILLE CORRECTIONAL FACILITY
PARKSIDE CORRECTIONAL FACILITY
QUEENSBORO CORRECTIONAL FACILITY
SHAWANGUNK CORRECTIONAL FACILITY
SING SING CORRECTIONAL FACILITY
SULLIVAN CORRECTIONAL FACILITY
TACONIC CORRECTIONAL FACILITY
ULSTER CORRECTIONAL FACILITY
WALLKILL CORRECTIONAL FACILITY
WOODBOURNE CORRECTIONAL FACILITY

APPENDIX B

