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**AN EVALUATION OF THE DEPARTMENT'S  
POLICY ON CRIMINAL ALIENS**

**Four Year Post-Release Follow-Up of  
Criminal Aliens Released in 1988**



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**U.S. Department of Justice  
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## EXECUTIVE SUMMARY

The Department has a long-standing policy of cooperating with the United States Immigration and Naturalization Service (INS) and the Executive Office for Immigration Review (EOIR). These two federal agencies are responsible for implementing the federal Immigration Law. The public protection goal shared by the Department and these federal agencies is the deportation of criminal aliens from the United States in general and New York State in particular.<sup>1</sup>

An analysis of the return to custody rates of a 1988 release cohort suggests that the Department's policy of cooperation with INS and EOIR has been successful.<sup>2</sup> The return rate for U.S. Born releases was 54%. In contrast, the return rates for foreign-born releases to the community was 38%, releases to INS warrant was 15%, and none of the releases with deportation orders returned to custody (see Figure 1 for a graphic illustration of these return rates).

It appears that when the federal agencies target criminal aliens for deportation from the United States, they are largely successful in their efforts. However, the return rates of illegal aliens and Mariel Cubans also suggest that the federal government needs to allocate more resources for the deportation of criminal aliens from the United States.

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1. It must be noted that while both agencies continue to work in a cooperative manner, nevertheless, the Department has initiated litigation against the INS, contending that it has failed to fulfill its obligations under the Immigration and Nationality Act with the consequence that many alien inmates remain in the custody of the Department and the Division of Parole who legally belong in the custody of the INS.

2. For purposes of this study only, a return to custody includes only those inmates who have served at least their entire minimum terms, who were released from the custody of the Department into parole supervision, or, released after completion of their entire sentence, or released into the custody of INS, and who were re-committed to the Department for having committed a new crime or for having violated a condition of parole.

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## THE CRIMINAL ALIEN PROBLEM IN NEW YORK STATE

Foreign-born commitments have risen sharply in recent years. The Department's overall inmate population has increased 78 percent between April 1, 1985 and December 31, 1992. While the number of inmates born in the United States increased 72 percent during this time period, the number of foreign-born inmates (also known as criminal aliens) increased by a staggering 194 percent.

Although the foreign-born inmates come from 111 different countries around the world, approximately 80 percent of the inmates who claim foreign-birth come from either the Caribbean or South America. Two-thirds of the foreign-born inmates were born in one of four countries; the Dominican Republic, Colombia, Cuba, or Jamaica. (For a more extensive discussion of this issue, see the April 1993 Department report entitled "The Impact of Foreign-Born Inmates on the New York State Department of Correctional Services").

Foreign-born inmates under the Department's custody are more likely to be convicted of drug offenses and more serious felonies than inmates born in the United States. Due to the nature of their commitment offenses, it is likely that foreign-born inmates will be imprisoned for a longer time than inmates born in the United States. Since the foreign-born prison population continues to increase and be imprisoned for a longer time than inmates born in the United States the Department's resources are being seriously strained as a result of the increased demand for housing and programming.

## FEDERAL AND STATE COLLABORATION

### Federal Responsibility

Under federal law, immigration matters are the exclusive responsibility of the United States Government. Given the serious economic and community protection implications of the increase in criminal aliens at both the national and state levels, the federal government began to focus some its resources on the criminal alien problem. In fact, recent Congressional enactments have been in the direction of making it easier for the federal government to deport criminal aliens.

The United States Attorney General is charged with the administration and enforcement of the Immigration and Nationality Act. The Attorney General has delegated these functions to the Commissioner of the Immigration and Naturalization Service (INS). Therefore, it is the responsibility of INS to investigate aliens,

prosecute excludable or deportable aliens (i.e., charge them with deportation), detain excludable or deportable aliens prior to deportation, and to deport aliens who have been ordered deported.

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 (EOIR) 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.

Therefore, INS is the federal agency responsible for investigating criminal aliens under the Department's custody, and accepting custody of criminal aliens released from the Department. In contrast, EOIR is the federal agency responsible for the adjudicative functions of trying the case and deciding whether or not to deport. (For a fuller description of the procedures and policies of INS and EOIR, see the Department report entitled "An Overview of Immigration and Deportation Procedures in the New York State Department of Correctional Services").

#### Department Policy

The Department has a long-standing policy of cooperating with INS and EOIR. The Department notifies INS of all foreign-born inmates under Department custody as soon as those inmates enter one of the Department's reception facilities. In an effort to facilitate INS investigation of foreign-born inmates, the Department has provided investigators assigned to the New York City District Office of INS with office space at its Downstate and Ulster reception centers. Moreover, the Department provides INS and EOIR with monthly listings of foreign-born inmates in an effort to keep the information provided to those federal agencies as current as possible.

The Department has also pursued a policy of cooperation with EOIR. Since 1986, the Department has allowed EOIR to conduct deportation hearings within Department facilities. The deportation hearings were initially conducted in only one New York State prison, the Downstate Correctional Facility in Fishkill, New York. In 1992, the number of deportation hearing sites was increased to six.

In summation, because immigration matters are the sole responsibility of the federal government, Department policy has necessarily been more reactive than proactive. Consistent with the agency's public protection mandate, the Department's general policy of cooperation and facilitation is designed to expedite the deportation of criminal aliens from the United States in general and New York State in particular.

## EVALUATION OF POLICY IMPACT

### Evaluation Criteria

The development of criteria to evaluate the impact of the Department's responsive policy of cooperation and facilitation with federal authorities on immigration matters is best accomplished by examining the goal of that policy. As mentioned above, the goal of the Department's policy is to further the public protection of New York State's citizens by effecting the deportation of criminal aliens from the United States in general and New York State in particular.

A direct measure of this goal would examine the number of criminal aliens actually deported by INS in a given year. The Department does not, however, have access to INS data. Therefore, a direct measure of the deportation goal is not possible.

At the present time, the only data available to the Department is admission, release, and under custody data. Given this data constraint, the deportation goal can only be indirectly measured as a function of return to Department custody.

The fundamental assumption of a return to custody criterion is that a criminal alien released for purposes of deportation, or turned over to INS custody upon release will be deported from the United States. Without INS data, the validity of this assumption cannot be conclusively determined. Therefore, while the return to custody measure is the only measure available, it is an indirect measure of deportation and must be viewed with caution. However, this return to Department custody data does reflect the results of this process in terms of public protection as well as the avoidance of incarceration costs.

### Return To Custody Data

In order to assess the impact of the Department's policy of cooperation and facilitation, it is necessary to examine the return to custody data over a period of time. This type of analysis can be accomplished by tracking a release cohort for a specified period of time.

In the present report, a 1988 release cohort was chosen. The 1988 cohort year is appropriate for two reasons; one programmatic and one methodological. First, deportation proceedings have been taking place in the Department's Downstate Correctional Facility since 1986. By 1988, the Department and federal agency procedures were well established. Second, the follow-up period for the release cohort must be long enough to ensure that return rate estimates will be reliable. By using a 1988 release cohort, the

follow-up period will be four years from the time of release. A four year follow-up period is sufficiently long to ensure reliable return rate estimates.

The 1988 release cohort used in this study is composed of all releases from the Department's custody to the community (i.e., parole releases, conditional releases, and maximum expiration of sentence releases) and to INS. Transfers to other agencies and court ordered releases were not included because they were not released to the community or their crime and/or sentence had been vacated. (For a more detailed commentary on the Department's ongoing efforts to develop more representative release samples for follow-up purposes, see the Department's recent working paper on this topic).

#### Comparison of Return Rates of U.S. and Foreign-Born Releases

As a first step in this analysis, it is logical to compare the return rates of the criminal aliens to the return rates of releasees born in the United States. As the data in Table 1 show, 88 percent (or 15,814) of the releasees were born in the United States, while 10 percent (or 1,704) were born in foreign countries, and birthplace was unknown for 2 percent (or 327) of the releasees.

TABLE 1

FREQUENCY AND PERCENT DISTRIBUTIONS  
OF 1988 RELEASES FROM DEPARTMENT CUSTODY

PLACE OF BIRTH	FREQUENCY	PERCENT
U.S. BORN	15,814	88%
FOREIGN-BORN	1,702	10%
BIRTHPLACE UNKNOWN	327	2%
TOTAL	17,843	100%

All of the United States born releases considered in this study were released to the community as parolees, conditional releasees, or maximum expiration of sentence releasees. In contrast, while most of the foreign-born releasees were released to the community in the same manner as the U.S. born releasees, some foreign-born releasees, for whom INS warrants or deportation orders were lodged, were released to INS custody. New York State Executive Law Section 259-i(2)(d)(i) authorizes the Parole Board to release a criminal alien who has served at least the minimum portion of their sentence to INS for purposes of deportation. This type of release is referred to as a conditional parole for deportation only (CPDO).<sup>3</sup>

In the 1988 release cohort, there were 1,060 foreign-born releases to the community, 557 releases to INS as the result of INS warrants and 87 releases to INS as the result of deportation orders (see Table 2).

TABLE 2

FREQUENCY AND PERCENT DISTRIBUTIONS  
OF 1988 FOREIGN-BORN RELEASES

TYPE OF RELEASE	FREQUENCY	PERCENT
RELEASED TO COMMUNITY	1,060	62%
RELEASED TO INS (WARRANT)	557	33%
RELEASED TO INS (DEPORTATION ORDER)	85	5%
TOTAL	1,702	100%

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3. The Department has challenged both the INS's failure to timely assume custody of aggravated felony CPDO's and the INS's failure to retain custody of such inmates in accordance with the Immigration and Nationality Act.

If the public protection goal of deporting criminal aliens is being attained, it would be expected that the return rates of foreign-born releases to INS as the result of an INS warrant or an order of deportation would be less than the return rates of either the U.S. born releases to the community or the foreign-born releases to the community. It is not expected that the return rates of releases to INS will be zero because aliens have the right to request relief from deportation or to appeal orders of deportation. Since a small portion of those appeals are likely to result in relief from deportation or a cancellation of a deportation order, it is expected that there may be some returns to custody from these categories.

The data in Table 3 show that 54 percent of the U.S. born releases to the community returned to custody at some time during the four year follow-up period. In contrast, 38 percent of the foreign-born releases returned to custody during the follow-up period. Only 15 percent of the releases to INS warrant and none of the releases with deportation orders returned to custody during the follow-up period.

TABLE 3

RETURN RATES OF 1988 RELEASE COHORT  
DURING THE FOUR YEAR FOLLOW-UP PERIOD  
BY BIRTHPLACE OF RELEASEE  
AND TYPE OF RELEASE

PLACE OF BIRTH	TYPE OF RELEASE	NUMBER RELEASED	NUMBER RETURNED	PERCENT RETURNED
U.S. BORN:				
	RELEASE TO COMMUNITY	15,814	8,521	54%
FOREIGN-BORN:				
	RELEASE TO COMMUNITY	1,060	403	38%
	RELEASE TO INS: WARRANT	557	84	15%
	RELEASE TO INS: DEPORTATION ORDER	85	0	0%
TOTAL		17,516	9,008	51%

The comparatively low return rates for foreign-born releases to INS suggest that the Department's policy of cooperation and facilitation has been effective in furthering community safety. It appears that when the federal government targets criminal aliens for deportation their efforts are largely successful.

## IMPLICATIONS OF POLICY EVALUATION

The public protection goal of deporting criminal aliens from the United States is a goal shared by both the federal government and New York State. An examination of return rates suggests that foreign-born inmates released to INS custody return at a substantially lower rate than either U.S. born or foreign-born inmates released to the community.

It must be noted however, that while the federal government appears to be successful in deporting some of the criminal aliens from the United States, the number deported represents less than two-fifths of the 1988 foreign-born releases. Admittedly, some of the foreign-born releases would be eligible for relief from deportation under the federal Immigration Law and could not be deported from the United States by INS. However, it would appear that significantly more criminal aliens could be deported if the federal government increased the resources targeted for the deportation of criminal aliens.

For example, in 1988, the 1,060 foreign-born releases to the community represented the largest proportion of foreign-born releases. By definition, the foreign-born releases to the community did not have INS warrants lodged against them and were not subjected to deportation proceedings while under the Department's custody. In sum, INS took no action against the majority of the 1988 foreign-born releases.

Of the 1,060 foreign-born releases to the community in 1988, 23% (or 242) were illegal aliens (see Table 4). One would think that most, if not all of these foreign-born releasees could have been targeted for deportation from the United States by INS on the basis of illegal entry alone. In addition, as the data in Table 4 show, the alien status of 30% (or 313) of the 1988 foreign-born release cohort had yet to be determined at the time of release. Many of these releasees would be classified as illegal aliens once their status was determined thereby increasing the pool of illegal aliens that could be targeted for deportation.

TABLE 4

RETURN RATES OF 1988 RELEASE COHORT  
DURING THE FOUR YEAR FOLLOW-UP PERIOD  
RELEASED TO THE COMMUNITY BY ALIEN STATUS

ALIEN STATUS	NUMBER RELEASED	NUMBER RETURNED	PERCENT RETURNED
NOT YET KNOWN	313	130	42%
ILLEGAL ALIEN	242	85	35%
LEGAL PERMANENT RESIDENT	360	127	35%
NATURALIZED CITIZEN	44	12	27%
MARIEL CUBAN	101	49	48%
TOTAL	1,060	403	38%

Even more alarming than the number of criminal aliens that were not targeted for deportation by INS are the return rates displayed in Table 4. In particular, almost half of the Mariel Cubans who were released to the community returned to the Department's custody during the four year follow-up period. The Mariel Cuban return rate is greater than any other alien status category.

This return rate is of great concern to the Department because most of the criminal aliens in the Mariel group would not have been admitted to the United States if the federal government had followed established screening procedures at the time of Mariel entry into the U.S. In response to this error of omission by federal agencies, Congress established the Mariel Cuban Reimbursement Program in 1985 to provide partial reimbursement to the states for costs associated with incarcerating the criminal aliens of the Mariel group. In New York State, the average annual reimbursement covered approximately 10 percent of the actual costs.

However, from the program's inception, the U.S. Attorney General and the Department of Justice have tried to eliminate the program during each Congressional budget hearing. In federal fiscal year 1992-1993, they succeeded in getting the Congressional appropriation for the program cut in half. The result was that the Department was reimbursed for only 4 percent of the costs of incarcerat-

ing Mariel Cubans. Given the high return to custody rate of the Mariel Cubans, it would appear that the federal government has failed in its community protection function. Moreover, the federal government has begun to retreat from its previous position of providing the states with at least some economic assistance for a problem initially created by federal agencies.

## CONCLUSION

In summation, the federal government and the Department share the community protection goal of deporting criminal aliens from the United States. Further, it appears that when the federal agencies target criminal aliens for deportation from the United States, they are largely successful in their efforts. From this standpoint, the Department's policy of cooperation and facilitation has also been successful.

Despite this success, the data suggest that the federal government needs to target more resources towards the goal of deporting criminal aliens from the United States. It is likely that a greater number illegal aliens and Mariel Cubans could be deported from the United States (or transferred to federal custody) if more federal resources were allocated.