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A Systems and Policy Analysis  
of Alien Criminality:  
A Model for Alternative  
Intervention Strategies

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## Preface

To date there has been no comprehensive literature review and policy analysis which addresses the issue of alien criminality in the United States. Public policy, often influenced by public opinion, frequently moves in the direction of immediate responses which seek to satisfy the public's safety and economic concerns. While these immediate responses may be (narrowly) effective, this study reveals the need for a more comprehensive "systems" response.

The issue of alien criminality is a complex one because it involves not only criminal, public safety, and economic concerns, but also raises the broader moral issue of immigration, one which is often in conflict with the other concerns. Absent the moral issue, it would be a more simple problem of criminality, one which might more easily achieve public consensus. Given the moral issue and the growing cultural diversity of the United States, however, public consensus becomes more difficult and challenging from a public policy perspective.

The "systems response" called for in this study offers the opportunity to better galvanize public opinion while at the same time offering the hope of a more effective solution. It becomes critical, therefore, to narrow the approach to one of alien criminality, rather than the broader consideration of immigration. This study takes that more narrow view in an attempt to better clarify the issue.

Alien criminality alone emerges as sufficiently complex to demand responses from virtually all elements of the criminal justice system. This study provides a number of alternative interventions by the INS, police, courts, treatment, corrections, and probation and parole, any of which might address a portion of the problem, but all of which would not only address the broader problem, but would also effectuate a more comprehensive and coordinated criminal justice system.

As has been evidenced with other narrowly defined "problems" (drugs, violent crime, treatment, prevention, etc.), while the "problem" may draw together various criminal justice system elements, the resulting improvements in comprehensiveness and coordination produce a criminal justice system more unified and capable of responding to other "problems". (For example, the popularity of multi-jurisdictional law enforcement task forces may have produced increasing numbers of arrests, but they often - and just as importantly - produce lasting relationships among members which result in greater comprehensiveness and coordination.) It is this "systems" approach to the problem of alien criminality which offers the promise of a truly comprehensive attack, with the hope of legitimate and measurable progress.

This study begins with a review of current and relevant literature, an examination of various public policies and legislation relative to alien criminality, and concludes with alternative strategies across the criminal justice system for criminal alien identification and intervention. It is hoped that this analysis will clearly demonstrate the importance of and initiate the beginning of a true systems approach.

Included in the Appendices are a variety of topics designed to contribute to the reader's breadth of knowledge regarding alien criminality, making this document a more complete reference for those interested in examining or intervening in this issue.

While many legal, legislative and procedural sources are cited, this report is in no way intended to provide any form of legal opinion, advice, or direction, nor is it intended to provide legal authority.

The opinions and analyses provided in this report are those solely of the authors or others where referenced.

## Part I Systems and Policy Analysis

### Introduction

Rising immigration in the United States has led to a reevaluation of the nation's priorities in addressing the alien population. While some perceive a threat to our society from rising immigration, others believe that immigrants come to the United States to seek a better way of life and should be perceived as an asset, rather than a threat, to our country. Despite disagreement surrounding these issues, it is clear that there are certain aliens who are involved in crime and illegal narcotics. Given the increasingly enormous size of the alien population in the United States, it has become evident that enforcement priorities must be reevaluated in order to focus more resources on the criminal aliens who may pose a threat to our communities and less on the average illegal immigrant crossing the border for work.

The United States Immigration and Naturalization Service (INS) defines an alien as "any person not a citizen or national of the United States" (United States Immigration and Naturalization Service [USINS], 1992b, p. A.3-2). Although many believe the term "alien" has a pejorative connotation, it is frequently used throughout this study in order to be consistent with the statutory language. This is important since its definition is technically distinct from other terms which are often used synonymously in casual parlance. For the purposes of this review, the term "criminal alien" is used to denote both legal and illegal aliens who have been convicted of committing crimes. While legal aliens can be deported after conviction of certain types of crime such as murder, manslaughter, and rape, illegal aliens can be deported even if they have not committed a deportable crime.

While researchers in the field disagree on the extent of alien criminality in the United States, there is evidence of trends in the types of crimes in which certain groups of aliens are more likely to be involved. Aliens involved in organized criminal networks that expand from their native countries into the U.S. are particularly difficult to apprehend. The foreign connection of many criminal aliens also provides a pathway for illegal narcotics from source countries. Organized crime and drugs are a particular focus of the INS in apprehending criminal aliens.

Several statutes of U.S. law provide conditions under which a criminal alien may be deported. Under the Immigration and Nationality Act, conviction of an aggravated felony is considered to be grounds for deportability. This includes money laundering, certain crimes of violence, and foreign convictions and also specifically includes controlled substance violations. Conviction of crimes involving moral turpitude, a rather loosely defined category of crimes which includes anything from bigamy to murder, is also grounds for deportation. This category also includes crimes against the authority of government such as smuggling, transporting or harboring illegal aliens. In addition to these grounds for deportation are firearms offenses, espionage, sabotage, treason, sedition and violation of the Military Service Act.

In order to address the above statutes, the Immigration and Naturalization Service has

initiated several programs and enforcement efforts as part of its "Criminal Alien Strategy." These efforts have resulted in an increase in the number and proportion of criminal aliens deported from the United States. However, they are hampered by a lack of resources, the inherent difficulty in tracking "undocumented" aliens, the sheer numbers of aliens in the criminal justice system, administrative burdens, and obstacles in coordinating with all elements of local, state, and Federal criminal justice systems.

A study by the U.S. General Accounting Office (GAO) (United States General Accounting Office [USGAO], 1987a) reviewed how several cities with large alien populations confront these obstacles to deporting criminal aliens. The study reported that several areas focused on identifying aliens in correctional facilities, while others focused on pre-arraignment identification. It also found that officials from the different areas reported different patterns of criminal activity. Three of the cities reported a major involvement of aliens in narcotics offenses. This is consistent with the perception of Rhode Island INS officials regarding this state's criminal alien population.

The importance of evaluating and then addressing the issue of criminal aliens becomes increasingly evident when we look at the costs associated with alien involvement in the criminal justice system. The nation's criminal justice system might save millions of dollars by identifying aliens, reporting them to the INS, and helping to expedite their deportation. These savings would come about not only by removing criminal aliens from the system earlier, but also by preventing recidivism. Positive effects could also be felt at the community level by impacting gang and drug dealing activity.

## I. U.S. Immigration

1992 Census Bureau projections predict an increase of 130 million persons in the United States by the year 2050 bringing the population to 383 million. The Urban Institute (Edmonston & Passel, 1992) estimates that the population of the United States will rise to 355.5 million by the year 2040. Furthermore, David Simcox in U.S. Immigration in the 1980's (1988) estimates that immigration accounts for approximately 40 percent of America's population growth.

The INS reports that 1,827,167 immigrants were legally admitted into the U.S. in 1991 (1992b). Numbers of illegal immigrants are far more difficult to count. In the article, "Undocumented Immigration", Jeffrey Passel (1986), writes that:

What distinguishes contemporary immigration from past immigration is that much of the current immigration is illegal, or undocumented. Because of the clandestine nature of much current immigration, certain information that was easily accessible in the past is not readily available (p. 182).

Unofficial estimates of illegal immigration range from 200,000 to 500,000 per year. One scenario offered by the Census Bureau (1992) estimates a constant rate of 200,000 new illegal immigrants annually. Prior to 1990 the Center for Immigration Studies (1993) estimated the

number of illegal aliens entering the United States permanently to be 250,000. This number was raised to 300,000 in 1991 based on indications that illegal entry was increasing. The Federation for American Immigration Reform (FAIR) estimates permanent illegal immigration at between 250,000 and 500,000 annually (Center for Immigration Studies, 1993).

These statistics are valuable but must be interpreted with caution. A study conducted for the INS, entitled Immigration Statistics: A Story of Neglect (Levine, Hill, & Warren, 1985), indicated that there are limitations to census data for several reasons. For instance, the amount of immigration data that can be collected is limited for reasons of cost and sensitivity. In addition, definitions and categories used by the Census are not always consistent with those of the INS, the same questions are not consistently asked in each decennial census, the census measures a static number instead of the flow of aliens, and many illegal aliens may not be responding to the census.

Public opinion has varied on the question of whether increasing immigration compounds the social and economic problems confronting the United States. According to Edwin Harwood (1986) in his article, "American Public Opinion and U.S. Immigration Policy," American attitudes toward immigration tended to be highly restrictionist in the first half of the twentieth century. During the 50's and 60's there was a liberalization of public opinion and government policy. However, Harwood points out that in the past 15 years policy and opinion have begun to diverge. Policy has remained rather liberal while public opinion has become more restrictionist in response to economic and societal problems. According to Wayne Cornelius (1982) restrictionism is a traditional response to collective frustrations since immigrants are easily perceived as a threat to the American way of life. Cornelius also asserts that the public incorrectly perceives a link between increased illegal immigration and increased crime. Harwood sees the increasing concern surrounding illegal immigration as arising out of concern for national sovereignty, the integrity of the borders, and a general dislike for law breaking and not out of ethnic or racial prejudice.

Evidence seems to indicate that the majority of immigrants come to the United States to work and to seek a better way of life. Nevertheless, it is increasingly evident that small minorities of immigrants who are legally deportable contribute significantly to crime and the illegal drug trade.

## II. Aliens and Crime

In Immigrants and the American City, Thomas Muller (1993) writes that "immigrants have been popularly associated with criminal activity since the early nineteenth century, when nativists charged that European countries were emptying their prisons and loading thieves and murderers aboard ships headed for our ports" (pp. 213-214). He points out that studies designed to tie Irish immigrants and then Italians and Russian Jews to high rates of crime were consistently unsuccessful. During the 1980s the issue of immigrant crime reemerged largely in response to the Mariel flotilla which carried anywhere from 2,700 to 40,000 Cuban criminals to the shores of Miami bringing with them a wave of crime that spread from Miami to New Jersey and Las

Vegas.

In his article, "Drowning in a Crime Wave," Ted Robert Gurr (1993) claims that we are in the midst of the third of three great crime waves and that each of these crime waves "can be linked to immigration, economic deprivation and war, which all interfere with the civilizing process" (p. 157). John Tanton and Wayne Lutton (1993) similarly contend that "under current immigration laws and procedures, frighteningly large numbers of newcomers see crime as their avenue to the American dream" (p. 159).

In support of the opposing view, Julian Simon (1989) in The Economic Consequences of Immigration points out that, in comparison to natives, immigrants tend to be younger and more often male. If one were to control for these factors, he argues, the rate of all crime would be less among immigrants than among natives. Muller (1993), on the other hand, argues that while "on a national basis, there is no evidence that immigrants as a group are more likely to commit crimes than the native-born" (p. 216), immigrants have contributed to high crime rates in some communities. He further notes that "the presence of a large population from South America and other drug-producing regions has facilitated the narcotics trade, and inevitably leads to incidents among drug dealers and addicts" (p. 216). Yet Muller warns against the portrayal of all immigrants as criminals. He points out that some immigrant populations have below average crime rates and that some are falsely arrested based on their appearance and limited language skills. Among ethnic drug cartels in large cities, virtually all immigrants arrested for drug related offenses are illegal aliens and not legal entrants. He also states that "most of the crimes committed by aliens are perpetrated against other aliens, as in Santa Ana, California where the police found that 70 percent of all recent homicide victims were illegal aliens and the majority of their assailants were also undocumented" (p. 216).

While there is widespread disagreement surrounding the extent of criminality among the immigrant population as a whole, state and federal law enforcement agencies and many theorists, like Muller, are increasingly recognizing patterns or trends of criminality among certain ethnic groups. Tanton and Lutton (1993) warn that the United States is especially inviting to foreign crime syndicates. They argue that "organized criminals of each nationality seem to specialize: Colombians in cocaine; Mexicans in marijuana, alien smuggling and auto theft; Nigerians in heroin, student-loan and credit-card fraud; Chinese in heroin and alien smuggling; South Koreans in prostitution; Russians in drugs and insurance-fraud; Jamaicans in cocaine" (p. 159). Ethnic criminal organizations include: the Asian Triads and the "Wah Ching"; the Japanese "Yakuza" crime syndicates; the Jamaican "Posses"; loosely structured Haitian networks; and the Cuban Marielitos; as well as newer Russian, Israeli, and Nigerian ethnic gangs. Tanton and Lutton point out that these organizations already "exist in their native countries and simply expand into the United States" (p. 160). The often complex foreign connection, as well as language and cultural barriers, make criminal aliens particularly difficult to apprehend.

Of particular concern for law enforcement is the connection these crime syndicates provide between source countries and the U.S. market for narcotics. In an article entitled, "Are We Truly Winning the War on Drugs?" Jim Kouri (1993) argues that, despite the Federal government's

claims to the contrary, we are fighting a losing battle against drugs in the United States. He notes that, while the anti-drug strategy was largely focused on cocaine, heroin and methamphetamine began making a comeback. The arena for drug enforcement activities has been continually evolving according to Kouri largely as a result of three unanticipated developments. First, Colombian drug gangs who were always considered key players in the cocaine trade have begun to grow, process and export heroin and have begun to expand into the European market. Also, Asian-manufactured methamphetamine is now being produced in a smokable form known as 'ice'. Second, new drug trade routes are being developed by gangs from former Iron Curtain countries in Europe, especially Russia, Poland, and Czechoslovakia. Third, a developing connection between the Cuban 'mafia' and Colombian gangs may further increase the heroin being marketed in the U.S.

### III. Statutory Bases for the Deportation of Criminal Aliens

The Immigration and Nationality Act of 1952 (INA) brought together prior laws governing U.S. immigration and naturalization into one comprehensive statute. While most policies were carried over from earlier statutes, the INA did contain some modifications, including broadened grounds for the exclusion and deportation of aliens and increased procedural safeguards for aliens subject to deportation. Included in the INA was the statement of a presumption of deportability in the case of aliens who are convicted of an aggravated felony. The Immigration Reform and Control Act of 1986 (IRCA) added guidelines for expedited deportation proceedings in these cases. The Immigration Act of 1990 (IMMACT 90) expanded the definition of "aggravated felony" contained in the INA to include money laundering, certain crimes of violence, and foreign convictions. The new definition explicitly includes state, Federal and foreign convictions. Aliens who are involved in illegal smuggling, transporting or harboring of aliens, visa fraud, or misrepresentation are also deportable under the INA.

In addition, the INA designates as a class of deportable aliens any alien who is convicted and sentenced to a year or more of confinement for a crime of moral turpitude within five years of their entry or who, at any time after entry, is convicted of two crimes of moral turpitude not arising out of a single scheme of criminal misconduct and regardless of whether the alien is confined. The phrase, "crime of moral turpitude" is particularly vague and subject to interpretation. In the 1942 case, "Matter of D" (1 I&N190, 194, National Lawyers Guild, 1993, p. 6-6), the Board of Immigration Appeals stated that moral turpitude involves conduct "which is so far contrary to the moral law, as interpreted by the general moral sense of the community, that the offender is brought to public disgrace, is no longer generally respected, or is deprived of social recognition by good living persons."

The Anti-Drug Abuse Act of 1986 (Pub. L. 99-570, Oct. 27, 1986, 100 Stat. 3207-47) added the provision that any alien is deportable who "...at any time after entry has been, a narcotic drug addict, or who at any time has been convicted of a violation of, or a conspiracy to violate, any law or regulation of a state, the United States, or a foreign country relating to a controlled substance..." These grounds for deportability were further expanded by the Immigration Act of 1990 so that drug "abusers" and aliens who are convicted of an "attempt" to

violate cited narcotic laws are also deportable. It also amended this clause to include, not only convictions, but admissions regarding controlled substance violations. The Anti-Drug Abuse Act of 1988 (Pub. L. 100-690, Nov. 18, 1988, 102 Stat. 4473) added to the INA the provision for the deportability of aliens convicted of offenses related to firearms or destructive devices or those convicted of carrying automatic or semiautomatic weapons or sawed-off shotguns.

#### IV. Enforcement Activities

In 1989 the GAO reported that "although millions of aliens entered the country illegally, only about 22,000 aliens on the average have actually been deported annually over the past 3 years" (p. 4). This fact pointed to the need for the INS to focus on the deportation of those aliens who are perceived to be the greatest threat to the Nation, namely, criminal aliens. The 1991 Statistical Yearbook of the Immigration and Naturalization Service (USINS, 1992b) states that approximately 40 percent of aliens removed from the United States in 1991 were charged with crimes or narcotics activities. 2,803 were removed on the basis of criminal charges and 10,300 for narcotics charges. This is a significant increase from 1986 when only 1,003 aliens were removed for criminal violations and 960 for narcotics violations, a combined total of only 4.1 percent of all aliens removed in that year.

According to the INS, the increased proportion of aliens removed based on criminal and narcotics charges came about largely as a result of the passage of the Immigration Reform and Control Act in 1986 "which helped the INS focus on the removal of those aliens determined to be the greatest threat to society" (p. 144). In addition, the INS notes that it "has improved its cooperation with other law enforcement agencies to ensure that aliens convicted of crimes and incarcerated are brought into deportation proceedings at the end of their prison sentence" (p. 145). The Yearbook warns that its data must be interpreted with caution since the data for each fiscal year must be updated for at least four years before being considered complete because of delays in receiving verification of departures. In addition, many deported aliens who initially were charged with serious criminal or narcotics violations were not recorded as such because they were charged with lesser offenses, such as immigration violations, for the purposes of deportation.

In 1992, the INS (1992b) issued the Report on Criminal Aliens as mandated by the Immigration Act of 1990. This report states that "increased immigration during the last decade has coincided with a sharp rise in alien involvement in criminal activity nationwide" (p. 5). In accordance with this, it further states that "the removal of aliens involved in criminal activity is one of the highest priorities within the Department's mission" (p. 5). The INS particularly focuses on those criminal aliens "who are involved in drug-related, violent, or organized criminal activity" (p. 5). According to the report, even with one third of INS' 1100 investigators devoting their time to criminal alien activities, alien identification in the correctional system alone is a daunting task involving 7,665 correctional facilities and probation and parole offices nationwide. As of October 1991, 16,060, or approximately 24 percent, of the total 66,784 individuals housed in Federal institutions were foreign born. State correctional institutions reported to the INS that, as of September 1991, 41,184, or approximately six percent, of individuals housed in their institutions stated that they were foreign born. Probation and parole offices reported to INS that

they do not maintain records of foreign born status.

In order to deal with increasing numbers of criminal aliens in the United States, the INS developed a "Criminal Alien Strategy." According to the report this strategy "relies on establishing points in the criminal justice system through which an alien must pass in completing the judicial correctional process" (USINS, 1992a, p. 7). The strategy consists of several departmental efforts. For instance, in response to the Anti-Drug Abuse Act of 1988, the INS, in cooperation with the Executive Office for Immigration Review (EOIR), established the Institutional Hearing Program (IHP) which enables INS and EOIR to begin deportation proceedings while criminal aliens are serving their sentences.

The IHP process begins when the criminal alien is identified by the INS in the correctional system. An INS officer conducts an interview with the alien to determine eligibility for deportation. Once the alien is identified, INS prepares a charging document and files the case with EOIR. In order to conserve judicial resources and ensure sufficient time to hear the case, charging documents must be based on a conviction and the alien must have at least six months remaining to serve. The need for time to complete the hearing process is evidenced by the GAO report, Immigration Control: Deporting and Excluding Aliens From the United States (1989), which found that in New York approximately 56 percent of deportation cases decided by an immigration judge took one year or more to complete and 11 percent took more than 7 years. When an appeal is made to the Board of Immigration Appeals (BIA), on the other hand, 88 percent of cases in New York took 2 years or more and 30 percent took 5 years or more. The various rights to due process for criminal aliens are studied in detail in the 1990 GAO report, Criminal Aliens: Prison Deportation Hearings Include Opportunities to Contest Deportation (USGAO, 1990).

The INS also initiated a project entitled "Five State Criminal Alien Model" in the states having the highest concentration of criminal aliens--California, New York, Texas, Florida and Illinois--which created cooperative efforts with state criminal justice agencies to screen foreign born inmates in state correctional facilities. "Eventually", the Report on Criminal Aliens states, "it is contemplated that standardized approaches and improvements in the processing of criminal aliens developed in the Five State Model will be expanded to all jurisdictions" (USINS, 1992a, p. 10).

Other initiatives of the Department include: the release of written guidance through the Bureau of Justice Assistance for states to provide notice of the conviction of aliens to the INS, as required by the IMMACT 90 (U.S. Bureau of Justice Assistance, 1991); participation in the Organized Crime Drug Enforcement Task Force (OCDETF) pilot project in Houston, Los Angeles, Miami and New York; participation in the Organized Crime and Racketeering Strike Force (OCRSF) of the Department of Justice; access to the National Crime Information Center (NCIC) and the Law Enforcement Telecommunications System (NLETS); an agreement with the Federal Bureau of Investigation (FBI) to begin entering warrants based on criminal grounds into the NCIC; and Bureau of Justice Assistance supported criminal alien training for local police.

In the future, the INS plans to establish a National Enforcement Operations Support Center (NEOSC) which would provide a centralized data base for storing criminal alien information, as well as 24-hour access to this information for police who believe they have in their custody aliens who have committed serious crimes. The INS also planned, as of 1992, to establish an Enforcement Case Tracking system (ENCATS) prototype in Philadelphia, Chicago, Atlanta and San Diego. This would be the primary data base used to automate the documentation and exchange of information regarding criminal aliens.

Despite the many initiatives of the INS, it is clear that they are only beginning to scratch the surface of the criminal alien problem. The INS Report on Criminal Aliens (1992a) notes that

the Department recognizes the magnitude of the task of interacting with such a diversity of agencies and activities in order to isolate the criminal alien segment of the population for purposes of identification and tracking. Notwithstanding the accomplishments already achieved by the INS in placing significant emphasis on this area, there is a noted disparity between the size of the diverse criminal alien population and the INS resources available to address the problem (p. 7).

These disparities can be accounted for by a number of factors. Even when convicted and incarcerated, many criminal aliens remain unknown to the INS. Others, who are known to the INS, may be incarcerated for short periods of time, making it difficult for the INS to identify them and complete the deportation process while they are incarcerated. In addition, the INS sometimes has difficulty obtaining certified records of conviction in order to secure a deportation. Finally, the system of appeals in the hearing process contributes to administrative burdens for the INS and delays in the process and, consequently, many aliens can and do drop out of the system at various points. Despite these and other obstacles, the INS reports that it

is working diligently to improve its methods of identification, tracking and removal, within present resource limitations, and is determined to meet the challenge of dealing with criminal aliens, through added resources, new technology, innovative enforcement strategies and legislative remedies (USINS, 1992a, p. 22).

## V. Criminal Aliens and the Criminal Justice System

The U.S. General Accounting Office (1987a) conducted a review of the criminal alien problem in five cities with large alien populations--Chicago, Denver, Houston, Los Angeles, and Miami. The resulting report also drew upon earlier reviews of the problem in New York City (USGAO, 1986). It included information on the views of state and local law enforcement agencies and how INS deals with those agencies to address the problem. According to the report, investigative efforts in Houston, Los Angeles, and Miami were directed mainly at incarcerated aliens, although the Houston and Los Angeles districts are also attempting to identify aliens

earlier in the criminal justice process. Chicago and Denver concentrate primarily on the early stages of the criminal justice process--at or before bond hearings--however, both areas have been hampered by a lack of funds.

There appear to be different patterns of criminal alien activity in various areas of the country. The GAO reports that officials from Houston, Los Angeles and Miami all indicated that they believe there is a heavy involvement of aliens in drug crimes. For instance, a Los Angeles drug task force investigation found that more than 50 percent of their arrestees were illegal aliens. In nearby Santa Ana with a population of approximately 25 percent illegal aliens, the head of the narcotics task force estimated that approximately 95 percent of their arrests are of illegal aliens. In Miami, 51 of the 109 Miami deportation cases reviewed involved drug crimes. This seems to parallel the national trends which show that deportations for narcotics offenses have increased tenfold between 1986 and 1991 (USINS, 1992a). In Denver, on the other hand, officials indicated that aliens are less involved in such serious crimes and are more likely to be involved in domestic and motor vehicle-related crimes. And in Chicago, it was estimated that the types of crimes committed by aliens appeared to parallel crimes committed by the general population. Miami found an alien connection, not only to criminals, but to victims. While the number of known foreign-born homicide offenders in Miami increased from 29 to 48 percent from 1979 to 1985, the number of foreign born victims also increased from 35 to 54 percent.

A survey of prosecutors in the five localities covered by the GAO report revealed that none favored giving aliens the option of leaving the country in lieu of prosecution. The prosecutors believed that deportation was insufficient punishment and that it sends the wrong message to aliens. This belief is contrary to that of the U.S. Commission on Civil Rights (1980) which asserts that deportation from the United States should be viewed as a severe punishment. Prosecutors also expressed a concern that aliens would simply return to the United States. This is a valid concern considering a study by the GAO (1987b) which reviewed the criminal history records on 165 deported criminal aliens and found that, of these, 56 had reentered the country at least once and had encountered the criminal justice system. These same 56 criminal aliens had a total of 152 deportations, at least 122 reentries, and accounted for a total of 260 arrests. Trial attorneys in the five localities also opposed foregoing prosecution in favor of deportation. Furthermore, where aliens are given the option to leave voluntarily they have been declining it. Programs put in place in New York City that allow certain kinds of arrested aliens to depart the country voluntarily were found to be unsuccessful because aliens chose to be prosecuted rather than leave the country or because they had insufficient money to pay for their transportation.

Overall, INS enforcement activities, according to the GAO, tended to focus on incarcerated populations. In New York City it was found that

INS generally did not pursue most aliens involved in crime who came into contact with the criminal justice system. Rather, INS waited until the aliens were incarcerated in state prisons before initiating investigations to identify the aliens as potentially deportable (USGAO, 1987a, p. 12).

INS investigators in Houston indicate that they focus on the incarcerated population because of their staffing restraints, saying "their staff is insufficient to process all known criminal aliens, much less identify new ones" (p. 26). Los Angeles District officials also believe that they should concentrate their efforts in the prison system to ensure that incarcerated aliens, who they believe to be among the worst criminals, are not released before deportation proceedings are initiated.

## VI. Costs of Criminal Aliens to the System

Overwhelming costs of investigating and deporting aliens and limited financial resources are at the heart of the problem of enforcing criminal alien statutes. Rodman Griffin (1992) writes that "the INS enforcement budget for 1992 comes to \$946 million, twice what it was in 1985 but still about half that of the New York City Police Department" (p. 376). However, studies indicate that the costs of maintaining criminal aliens in the criminal justice system are so great that we can hardly afford not to deport them.

A report of the Los Angeles County Board of Supervisors (1992) found that recent legal immigrants, amnesty persons, and undocumented persons accounted for \$351 million, or 23 percent, of net County costs for justice-related departments in 1991-92 (p. 4). In the same time period the County only collected \$139 million in revenues from these groups, while the majority of taxes paid by the three groups went to the Federal government.

According to a report by the Countywide Criminal Justice Coordination Committee (CCJCC, 1992) in Los Angeles, much of the criminal justice cost for the County could be accounted for by repeat arrests of deportable criminal aliens. This report was a follow up to a 1990 INS survey of all identifiable foreign-born inmates released through the Inmate Reception Center. 1,875 of the identified deportable aliens were tracked from June 1, 1990 through May 31, 1991 following the 1990 study (no verifiable information was found for 58 defendants). Of these 1,875 defendants, 772 or 40 percent were rearrested during the target year, accounting for a total of 1,522 arrests. A review of the cumulative arrest activity of the 1,875 deportable aliens tracked revealed that, between 1958 and 1992, 1,536 of the defendants accounted for a total of 10,989 arrests. Furthermore, 87 percent of these arrests occurred within Los Angeles County.

The L.A. CCJCC study estimates that the annual impact of deportable aliens on the criminal justice system in Los Angeles County is \$75,165,000. This estimate did not include justice system costs not directly related to adult criminal cases, such as costs for administration, facilities, and civil operations. Amounts estimated also did not reflect street enforcement and criminal investigation activities and misdemeanor prosecutions by city attorneys. In addition, place of birth information was established only by the voluntary declaration of the arrestee or by local law enforcement so that the actual number of criminal aliens in the criminal justice system was believed to be higher. Given these factors, the estimated cost to the criminal justice system should be considered conservative.

Most areas of the United States do not encounter the magnitude of the criminal alien problem that is encountered in Los Angeles. However, the costs indicated by the study apply to

all states in varying degrees. The U.S. Bureau of Justice Statistics reports that civil and criminal justice expenditures by Federal, state, and local governments in the United States increased 61 percent per capita between 1971 and 1990 (U.S. Bureau of Justice Statistics [USBJS], 1992). The biggest increase--99 percent--was experienced in corrections. In fact, since 1979, state government expenditure for building prisons increased 612 percent. Between 1980 and 1992 the prison population has increased by about 168 percent. Per capita incarceration rates grew most rapidly in the Northeast, increasing by 198 percent (USBJS, 1992).

## VII. Summary

This review of literature and policy has summarized the important areas to be considered in analyzing the problems of alien criminality. These areas include concerns surrounding increasing U.S. immigration, especially illegal or undocumented aliens and the problems in tracking them. Also covered were several viewpoints regarding the estimated extent of criminality among aliens and types of crime committed, including narcotics trafficking and organized crime. A review of relevant laws found that legislation supports the deportation of aliens for several criminal offenses, such as aggravated felonies and crimes of moral turpitude. Enforcement activities were found to be increasingly focused on supporting this legislative agenda. However, the INS is severely hampered by a lack of resources and the sheer magnitude of the problem. A review of approaches to the problem in several areas revealed that many officials chose to focus on criminal aliens who are incarcerated and some areas reported a connection between drugs and criminal aliens. Finally, this review attempted to reveal the possible magnitude of the criminal alien problem in terms of its financial impact on the system and the savings that might be achieved through interagency cooperation to identify and deport criminal aliens.

The nation could conceivably save many millions of dollars annually in the correctional system alone if deportable criminal aliens were removed from the country and subsequently, excluded from reentry. Even further, there could be savings to all elements of the criminal justice system, as well as savings of the incalculable costs to victims of crime and their communities. However, given their limited resources, the INS cannot be expected to solve the problem alone. Additionally, the criminal alien problem (and therefore its solutions) extends far beyond the jurisdiction of the INS. Criminal aliens violate federal, state, and local statutes, and move from arrest through prosecution to incarceration, probation and parole, frequently without identification of their criminal alien status. As the next section of this study reveals, strong relationships and effective systems must be developed between federal, state, and local justice agencies in order to effectively reduce the impact of criminal aliens on the justice system.

**Part II**  
**An Analysis of Alternative Identification Opportunities  
and Intervention Strategies for the Criminal Justice System**

**Introduction**

The following section of this Report will focus on the alternative intervention strategies which might be initiated within a state's criminal justice system. As will be obvious, most of the federal enforcement system (with the exception of the INS) is not considered here since the focus of the study is on the potential for improvements in states' criminal justice systems.

**I. Alternative Identification Opportunities**

As illustrated in the accompanying chart "Criminal Alien Flow Through A Model Criminal Justice System", there are numerous opportunities to identify criminal aliens. This analysis results from an assessment of the criminal justice system and how criminal aliens move through its various components. It includes local and state police departments, District and Superior Courts, and Corrections, which may include both local jails and state prisons. The flow chart describes opportunities for identification (boxes labeled with numbers) and the opportunities for criminal aliens to exit from the system (circles labeled with "E").

This narrative analysis describes in detail how criminal aliens might be identified, (corresponding to the numbers on the chart) and is the basis for making strategic recommendations for interventions to identify criminal aliens.

1. Illegal Entry

Although this opportunity for identification and intervention is outside the purview of most jurisdictions, it is included here to offer a complete continuum. United States borders are patrolled through numerous surveillance activities, as are ports of entry. The literature and national statistics offer a discouraging view of the effectiveness of these strategies. In a (July 28, 1993) message to Congress, President Clinton proposed the hiring of up to 600 additional Border Patrol Agents, enhancement of the State Department's "lookout" system that lists foreign criminals and terrorism suspects, expansion of pre-inspection at foreign airports of U.S.-bound passengers, and hiring more officers to handle the expedited exclusion hearings.

In the event that any or all of these (or other) proposals become reality, it will become increasingly important for local and state law enforcement agencies to coordinate their efforts with those federal initiatives.

2. Arrest By Police

This Report's analysis reveals that it is common for local and state police to contact the INS in the event that they arrest someone whom they suspect to be a criminal alien.

Many police departments also invite INS agents to accompany them on certain illegal drug investigations and arrests to streamline the referral process. However, there are not enough INS agents to accompany police from even the larger departments on a regular basis. There exists here an opportunity for enhancement of criminal alien enforcement activities, but caution must be taken whenever additional demands are placed on normally overburdened local police forces. Additional consideration must be given to federal and local authority and jurisdiction.

### 3. District Courts

It is feasible to enhance the identification of illegal aliens who appear on the District Court (or lower level courts) calendars by assigning someone to cross-check this calendar with data bases available to the INS. While this cross-checking might be productive, it would identify those who have been charged with misdemeanors as well as felonies. Historically, those with felony charges are more likely to be detained by INS, making this intervention less productive than others, specifically Superior Court Arraignment, #7 below.

### 4. Correctional Commitment

During the process of committing a defendant to inmate status, basic identification data are collected. Among these data are citizenship status, nativity, date of birth, and Social Security number. Any of these data may raise questions regarding eligibility for deportation. Among those committed are those who have been arrested (either denied bail or unable to afford bail), and those who have been convicted of a crime and were not allowed bail or who cannot afford bail. Of those who cannot afford bail but are committed for a bailable offense, some may ultimately be bailed out of incarceration through a state-supported bail funds (which exist in some jurisdictions), designed to reduce prison populations. This occurrence could result in the bail of someone who would ultimately be identified as deportable, a potentially counterproductive act.

There is a federal requirement (Section I of the Drug Control and System Improvement Act of 1992 and Section II of the Immigration Act of 1990) that state prisons make available to the INS data reflecting their processing of criminal aliens. In some jurisdictions, all commitment data are entered into a computer data base that is immediately available to the INS for them to review daily. Additionally, printed copies of this data may be transmitted to INS periodically. Other jurisdictions handle this requirement differently, while some others are still planning their response to the requirement. Given this opportunity to identify those who may be deportable, it appears that this point in the flow is of high value, warranting strong consideration for allocation of resources or attention.

Most correctional commitment processes do not happen in a consistent manner. Most often, commitments are processed in groups, some of which may be occasionally large. Expecting committing personnel to initiate in-depth interviews focused on citizenship status may be unrealistic, forcing policy-makers to streamline the additional interview requirements and

provide bi-lingual personnel and additional training. These considerations provide the potential for effective results, however, and should be given high priority.

5. Correctional Medical Screening

After inmates are committed they are medically screened in most systems. During this process, inmates are given physicals and blood tests. Given some amount of training it is conceivable that those doing the medical screening could be more vigilant in looking for those indicators of illegal status.

6. Correctional Intake

Immediately after Commitment, inmates are normally assigned and escorted to their cell. From that cell they are processed through intake. The intake process typically includes psychological and psychiatric screening and background interviews. It is again conceivable that intake personnel could be trained to look for indicators of illegal (or legal) alien status that might point to deportability.

7. Superior Court Arraignment

Normally, defendants who are incarcerated due to inability to make bail or those for whom bail is denied will be transported from prison to Superior Court for a pre-arraignment hearings, where the inmate is identified and a date is set for arraignment. At the next appearance for arraignment, the inmate is again brought to Superior Court, and a plea may be entered. Occasionally (but not uniformly), a plea negotiation may have occurred between the prosecutor and the defense attorney, and the case is disposed, resulting in either a dismissal, a sentence to incarceration, or probation.

Daily calendars are normally printed which list the defendants who will appear for 1) Pre-Arraignment, 2) Arraignment, 3) Pre-Trial Hearings, or 4) Trials. If this calendar is available the day before it is heard, and could be cross-checked with another database to discover indicators of alien deportability. If this additional process were to be adopted, it presents yet another "net" which could identify criminal alien status. The advantage in this action is that identification at this point might prevent the prosecutor and defense attorney from unknowingly releasing a deportable criminal alien. The disadvantage here is that district attorneys (or attorneys general) normally process high number of defendants daily, and adding yet another step in their process may be unrealistic and unattainable. Should this additional step appear to be worthwhile, the personnel to provide this screening must be identified and trained.

Another potential conflict here is that (as was noted previously), many prosecutors believe that state and/or local sentences should be served prior to deportation, arguing that when state statutes are broken, state sentences should be served. While immediate deportation (where possible and appropriate) could reduce incarceration expenditures, it is clear that prosecutors must be supportive of any new identification initiatives, and therefore must agree to participate.

It is possible (and advisable) that some compromise or middle ground must be found which meets the additional identification needs of the INS and local law enforcement and can be supported by prosecutors. Public opinion and perception must also be taken into consideration.

#### 8. Correctional Sentenced Served

After an inmate is sentenced, s/he will have been classified and assigned to a particular level of security. All sentenced (and non-sentenced) inmates are normally included in corrections computer data bases, and could be reviewed to determine their deportability status. Less formal means of identifying deportable aliens could also be employed among the population.

#### 9. Correctional Substance Abuse Treatment Screening

In those correctional systems which provide substance abuse treatment, the inmate is normally interviewed and assessed using some standardized instrument and interview. These interviews typically include demographic and historical data. Through training, a substance abuse counselor could be taught to look for indicators of alien deportability during this screening process. This additional responsibility of the interviewer, however, may be viewed as one which conflicts with the interviewer's role in "helping" the inmate process through treatment. This view will depend on the varying roles of the interviewer, and must be accommodated.

#### 10. Bail

When an inmate is released on bail from either incarceration or from a court hearing, s/he may occasionally elect not return for criminal processing. In this event, a judge issues a bench warrant. Those assigned the responsibility to apprehend outstanding warrants (occasionally a "Warrant Squad" or some other such body) could cross-check each entry to determine alien and deportability status. While this opportunity may identify the alien, apprehension is still at issue.

### II. **Analysis of the Criminal Justice System**

To place these identification opportunities in perspective, an analysis of how the criminal justice system in each state currently copes with alien criminality is important. It is apparent that the system's needs, capabilities, and priorities directly influence the above opportunities and add a degree of practicality to the above theory. While the flow chart identifies the universe of opportunities for identification, this universe must be viewed within the context of what is reasonable and attainable. Matching the opportunities for identification with the system's capabilities produces alternative strategies for Project implementation.

### III. **Strategies for Implementation**

Comparing the opportunities for criminal alien identification and the criminal justice

system's priorities and capabilities, a number of strategies can be stated which will meet the objectives of increased identification and at the same time meet the needs of the CJS. Prior to the development and selection of alternative strategies, a number of assumptions on which the strategies are based must be understood. These assumptions are as follows:

1. Assumptions

a. The INS's priority of detaining and deporting criminal aliens is hampered by its normally limited capacity for incarceration. While the INS is committed to maximizing its deportation efforts, some safeguard must be undertaken to minimize detainees' opportunities to exit the system. Increasing the apprehension of criminal aliens will necessarily produce an increase in the demand for detention facilities. Overlooking this basic equation will only serve to frustrate those who apprehend the suspects, but will also quickly be communicated to the criminal alien community, undermining the seriousness of the initiatives. This points to the need for a balanced criminal justice system, one which is capable of responding to the entire continuum of new initiatives, and one which understands and supports "systemic" efforts and effects.

b. Prosecutors' normally high caseloads of felony prosecutions point to the need to guard against any significant increase in their workload. In order to maximize their participation, background investigations and preparation of criminal alien cases must be minimal or provided by personnel other than the prosecutors themselves. Asking prosecutors to expand their responsibilities and workload will usually be unrealistic.

c. State Departments of Corrections have a clear interest in reducing their populations of criminal aliens. The extent to which they reduce their costs of incarcerating criminal aliens is their measure of success. Cost-effectiveness (including cost avoidance) must be calculated in order to measure goal attainment. Ultimately, departments of corrections may need to add or redeploy personnel to accommodate increased screening, but these costs will probably be exceeded by cost savings.

d. The best strategies for Project implementation will be those which are most productive, interfere least with the existing system, and are most cost-effective. The following strategies attempt to balance these assumptions.

**IV. Recommendations - Phase I**

A review of the relevant legislation applying to immigration and criminal aliens reveals a wide variety of deportable offenses. The reality of limited resources, however, forces the CJS to set priorities for enforcement. Historically these resources have been concentrated on the serious criminal alien - the one whose offense would most likely lead to deportation. This study acknowledges this priority, and has elected to focus its identification recommendations on the criminal alien. This "High Impact Criminal Alien" (description devised by this study) is one who is seen by the CJS as the most important to focus on because that person

represents;

- a. The greatest potential for CJS cost and citizen victimization;
- b. The highest probability for deportation; and
- c. The highest probability for intra-system cooperation.

If a state's criminal justice system were to adopt an objective of eliminating all High Impact Criminal Aliens (HICAs) from its system, it would necessarily focus on those categorized the following ways:

- a. Level 1 CJS Involvement - those whose criminal actions qualify for the HICA description, but who have yet to be completely adjudicated or incarcerated; and
- b. Level 2 CJS Involvement - those whose criminal actions have led them through adjudication and incarceration.

These categories are described here because different identification and intervention processes are applied to each. The following discussion will describe how identification and intervention techniques might be applied to both categories. Intervention techniques applied to those with Level 1 CJS involvement would attempt to prevent or minimize their adjudication and incarceration through speedy deportation processing. Intervention techniques applied to those with Level 2 CJS involvement would attempt to reduce their fiscal impact on the CJS through removal from incarceration by deportation processing.

This study's analysis indicates that Level 2 interventions would cost very little and would save the predictable costs of further incarceration. It appears that Level 1 interventions, while producing the greatest social benefit, may bear the greatest cost. By intervening with Level 1 CJS involvement, "new" criminal aliens would be identified, and when any segment of the CJS increases its level of activity, costs increase. The two approaches, then, seek to identify, process and deport those that exist in the system now, as well as identifying those who have yet to fully enter the system.

The inherent conflict in identifying new criminal aliens is not only the increased cost, but also the determination of which segment of the CJS will ultimately bear those costs. Typically the HICA will require incarceration throughout the deportation process, but INS districts typically have limited capacities to incarcerate. Release of HICAs due to limited facilities has the potential result of that person's illegal exit from the system.

For these reasons, this study will first recommend intervention techniques which will focus on the Level 2 CJS involvement - those who exist in the system now. These methods may be employed immediately and may be expected to produce a cost benefit which can be calculated based on savings of further incarceration, probation, parole, and the HICA's future criminal activity and recidivism.

A. The state's Department of Corrections should insure that the data collected during the commitment process will include nativity and Social Security numbers. This inclusion will assist INS in screening those commitments.

B. The DOC should participate in additional in-service training (as necessary) provided by INS or others to increase DOC's ability to identify those new commitments with questionable nativity and immigration status.

C. The DOC should consider employing informal methods of identifying criminal aliens among the existing sentenced population.

D. The DOC should participate in identifying those with foreign nativities who have at least 12 months left to serve. This will be assisted by DOC's computer data base or other methods.

#### V. Recommendations - Phase II

This Phase of activities will explore the opportunities for identification of Level 1 CJS-involved High Impact Criminal Aliens - those who have not yet been fully adjudicated or incarcerated. This Phase will be experimental and will focus on data collection and the determination of the potential for implementing interventions with this population.

The discussion of increased costs to the CJS assumes that increased identification efforts will produce increased numbers of criminal aliens eligible for deportation. In order to test this hypothesis it is recommended that prior to the implementation of any measures focusing on Level 1 CJS-involved criminal aliens that there be a period of data collection and analysis which would provide a more empirical basis for future recommendations. This data collection and analysis would be performed with the cooperation of the INS, the prosecutors, and the courts.

A. Personnel will be assigned to cross-check the daily court calendars with INS data bases to determine the number of those with questionable nativity. Those identified will be matched with the HICA description which would normally be detained for deportation hearings. If the number produced by this study results in a significant number, further discussions and recommendations would be made which would consider institutionalizing this process. It is expected that this process would enjoy the support of the appropriate prosecutor.

B. The prosecutor(s) and the INS will allow for the cross-checking of defendants on the daily court calendars with available INS data base(s) to identify alien defendants.

C. The prosecutor and the court will agree that when an alien defendant is identified the prosecutor will seek a conviction and the defendant will not be granted bail (where allowable under law and sentencing guidelines) in order to prevent the defendants' exit from the CJS. Concurrently, DOC will agree to bear the cost of incarceration pending deportation hearings, costs which are already borne by DOC.

D. The INS, DOC, prosecutor, and court will further agree upon a list of criminal charges for the above process which would likely result in successful deportation hearings.

E. Local and state police, would undergo both pre-service and in-service training which would increase their capacity to identify those with questionable nativity and immigration status. If this were to be implemented, data would be collected pre- and post-training to measure any change in identification and referral to INS.

F. States' Departments of Corrections would provide, with the assistance of the INS, pre- and in-service training to those personnel whose responsibilities include inmate commitment, medical screening, classification, and treatment. This training would focus on methods of identifying those with questionable immigration status. Those identified would then be referred to the appropriate DOC personnel and the INS.

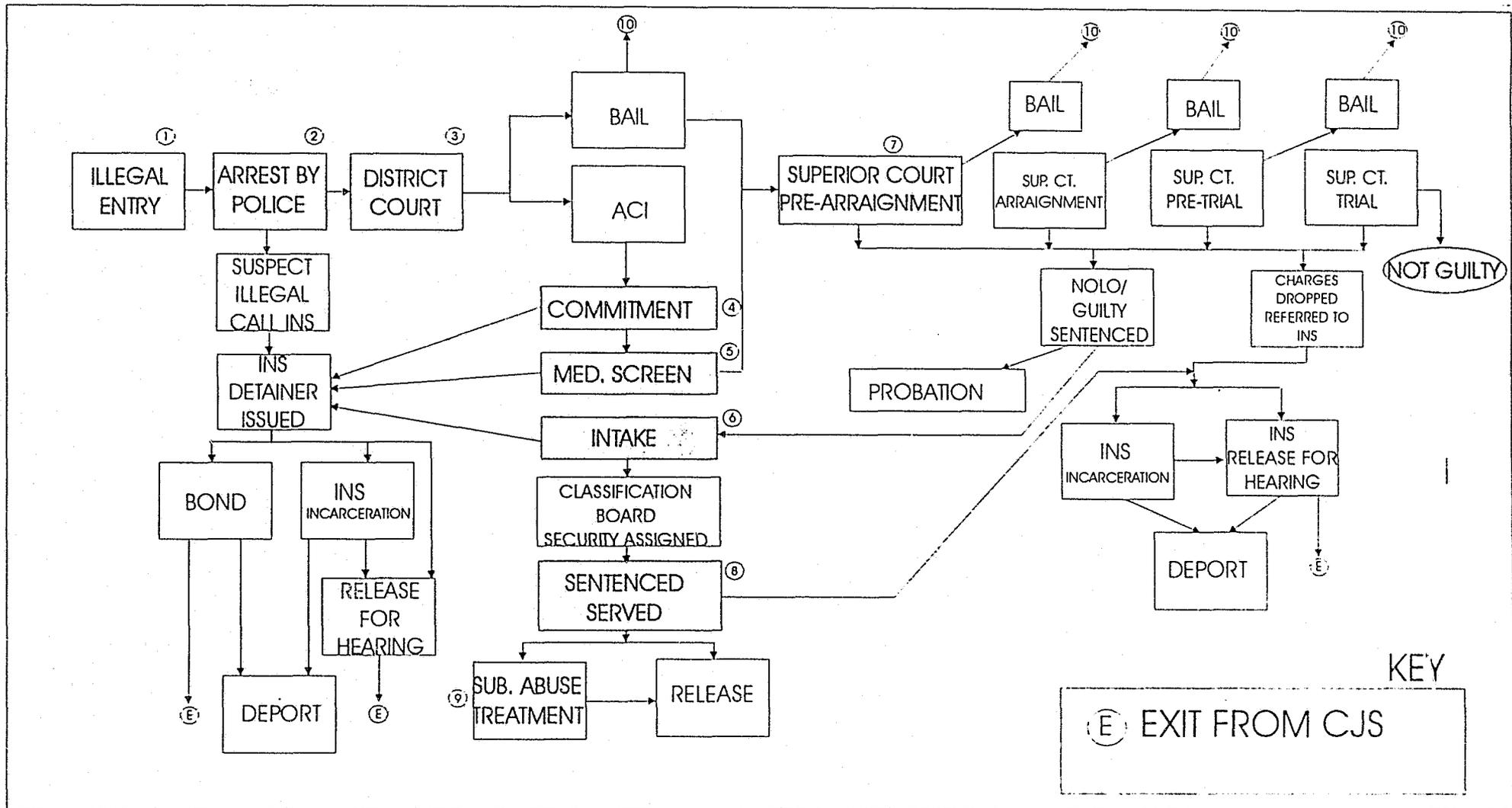
## VI. Summary

Illegal immigration has gained national attention as a result of criminal justice, economic and political considerations. For the purposes of this study, this broad issue has been narrowed to focus on alien criminality. A review of the literature, policy, and legislation reveals a pattern of responses to this problem which have yet to produce publicly acceptable results. This study suggests a system-wide approach whose inter-agency cooperation would not only hold the promise of greater results, but which would concurrently strengthen the criminal justice system.

A sequential and incremental approach is recommended, one which should be carefully evaluated for its productivity and cost-effectiveness. While it is anticipated that some increase in implementation costs will be experienced, these increases must be measured against the anticipated cost savings accrued by the total criminal justice system and the public at large.

Should such a systems approach be initiated, there is every reason to expect public support, which itself would reinforce the necessary executive and legislative initiatives.

# CRIMINAL ALIEN FLOW THROUGH A MODEL CRIMINAL JUSTICE SYSTEM



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## Appendix I

### Key to Abbreviations

BIA	Board of Immigration Appeals
BJA	Bureau of Justice Assistance
BJS	Bureau of Justice Statistics
ENCATS	Enforcement Case Tracking System
EOIR	Executive Office for Immigration Review
FAIR	Federation for American Immigration Reform
FBI	Federal Bureau of Investigation
GAO	General Accounting Office
IHP	Institutional Hearing Program
IMMACT 90	Immigration Act of 1990
INA	Immigration and Nationality Act
INS	Immigration and Naturalization Service
IRCA	Immigration Reform and Control Act
NCIC	National Crime Information Center
NEOSC	National Enforcement Operations Support Center
NLETS	National Law Enforcement Telecommunications System
OCDETF	Organized Crime and Drug Enforcement Task Force
OCRSF	Organized Crime and Racketeering Strike Force

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### Appendix III

#### Additional Sources of Information Regarding Crime and Immigration

American Immigration Lawyers Association	800-982-2839
Bureau of Justice Assistance Clearinghouse	800-688-4252
Bureau of Justice Statistics Clearinghouse	800-732-3277
Carrying Capacity Network	800-466-4866
Center for Immigration Studies	202-466-8185
Center for Immigration Policy and Refugee Assistance	202-298-0213
Center for Migration Studies of New York, Inc.	718-351-8800
Federal Bureau of Investigation	800-793-7963
Federation for American Immigration Reform	202-328-7004
Hispanic National Bar Association	201-348-4900
Immigration and Naturalization Service	
Press Office	202-514-2648
Enforcement Department	202-514-3032
Investigations Division	202-514-1189
National Asian/Pacific American Bar Association	202-416-0653
National Center for State Courts	800-877-1233
National Criminal Justice Reference Service	800-851-3420
National Lawyer's Guild, National Immigration Project	800-221-9428
National Technical Information Service	703-487-4660
RAND Corporation	310-393-0411

U.S. Documents Office	202-225-3456
U.S. General Accounting Office	202-512-6000
U.S. Government Printing Office	202-783-3238
U.S. House Judiciary Committee	202-225-3121
U.S. Senate Judiciary Committee	202-224-3121
Urban Institute Program for Research on Immigration Policy	202-833-7200

## Appendix IV

### Criminal Grounds for Deportation of Aliens

(Selected sections from the Bureau of Justice Assistance Guidance for the Improvement of Criminal Justice Records, 12/91)

Criminal grounds for deportation of aliens are enumerated in Section 241 of the Immigration and Nationality Act (INA). They include the following which is not an exhaustive list. Failure to register under the Selective Service Act and falsification of documents, for example, also constitute grounds for deportation.

1. Crimes involving moral turpitude: requires conviction of such crimes within five years after the date of entry and that the alien is either incarcerated or sentenced to incarceration for one year or longer.
2. Multiple criminal convictions for crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether the sentence includes incarceration, or whether the convictions were in a single trial.
3. Convictions of an aggravated felony any time after entry. At any time after entry, a conviction of a violation of (or conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance, other than a single offense involving possession for one's own use of thirty grams or less of marijuana.
4. Conviction at any time after entry, under any law, of purchasing, selling offering for sale, exchanging, using, owning, possessing, or carrying, in violation of any law, any weapon, part, or accessory that is a firearm or destructive device (as defined in Section 921 (a) of Title 18, United States Code).
5. Conviction under Chapter 37 (espionage), Chapter 105 (sabotage), Chapter 115 (treason and sedition), of Title 18, United States Code, for which a term of imprisonment of five years or more may be imposed.
6. Conviction under Section 871 or 9 60 of Title 18, United States Code, violations of the Military Selective Service Act (50 U.S.C.App. 451 et seq.), and violations of Section 215 or 278 of the INA.

The INA defines certain serious criminal offenses as aggravated felonies. There are severe immigration consequences that result from convictions for crimes that are defined as aggravated felonies. Eligibility for discretionary relief from deportation is severely limited for aliens convicted of aggravated felonies. Further, the INA provides for mandatory detention and

expedited deportation proceedings against aliens convicted of such offenses, which include murder, drug trafficking, illicit trafficking in firearms or destructive devices, money laundering, violent crimes carrying a prison term of five years or more, or any attempt or conspiracy to commit such acts. See INA S 242A, 8 U.S.C. 1252a.

## Appendix V

### Crimes Involving Moral Turpitude

(Selected sections from the Bureau of Justice Assistance Guidance for the Improvement of Criminal Justice Records, 12/91)

Generally, conviction of the following crimes may make an alien amenable to exclusion or deportation. This list is not all inclusive.

#### 1. Crimes Against The Person

- Murder or intentional homicide
- Voluntary manslaughter
- Manslaughter (depends on degree)
- Homicide by reckless conduct
- Attempted murder
- Kidnapping
- Mayhem
- Assault with intent to commit murder
- Assault with intent to commit abortion
- Attempted assault, second degree (with intent to commit carnal abuse and rape)
- Indecent assault (falls short of rape)
- Atrocious assault and battery
- Carrying a concealed weapon with intent to use against the person of another  
(where the intent to use the weapon is presumed)
- Assault in the second degree (with a weapon or other instrument likely to produce  
grievous bodily harm)
- Assault with a deadly and dangerous weapon
- Assault (with a weapon likely to produce bodily harm)
- Rape
- Interfering with a law enforcement officer
- Attempting to obstruct or impede the progress of justice

#### 2. Crimes Against Property

- Arson
- Blackmail
- Forgery
- Robbery
- Embezzlement
- Larceny
- Receiving stolen goods (with knowledge)

Burglary  
Extortion  
Fraud  
Grand theft  
Transporting stolen property  
Malicious destruction of property  
Obtaining money by false pretenses  
Bribery of an amateur athlete  
Malicious trespass

3. **Sexual And Family Crimes**

Practicing prostitution  
Maintaining a house of prostitution  
Renting rooms with knowledge that they were to be used for prostitution  
Adultery  
Bigamy  
Statutory rape  
Oral sexual perversion  
Soliciting commission of crimes against nature  
Soliciting people to engage in lewd or dissolute conduct  
Gross indecency  
Contributing to the delinquency of a minor (sexual acts)  
Taking indecent liberties with a child  
Incest  
Abandonment of a child

4. **Crimes Against The Authority Of Government**

Alien smuggling, transporting, or harboring  
Defrauding the U.S. by falsely issuing a narcotics prescription  
Offering a bribe to a government official  
Making, passing, or possessing counterfeit coins  
Conspiracy to violate internal revenue laws  
Use mail to extort  
Possession of counterfeit obligations (with knowledge)  
Counterfeiting  
Conspiracy to pass counterfeit coins  
Smuggling merchandise  
Willful misapplication of funds of a savings and loan association  
Impersonating a federal officer  
False statements in the acquisition of a firearm  
False statements or entries  
Harboring a fugitive from justice

Mail fraud  
Uttering and selling false or counterfeit immigration documents  
Influencing or injuring an officer, juror, or witness  
False statements to obtain a passport  
False statements under oath in an alien's application for permanent residence  
Perjury  
Theft from U.S. mails  
Interfering with trade and commerce by violence and threats  
Taking kickbacks  
Trafficking in narcotic drugs  
Knowingly failing to report income  
Union official unlawfully accepts a loan  
Violation of Selective Service Act (false statement)  
False statement to obtain unemployment benefits

## Appendix VI

### The Deportation Process

(Selected sections from the General Accounting Office, Immigration Control: Deporting and Excluding Aliens From the United States, 10/89)

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

The apprehending INS officer may offer the alien the opportunity to depart the country voluntarily if the alien is eligible; i.e., not a criminal. The alien may also apply to INS for certain types of relief from deportation such as asylum or adjustment of status. If voluntary departure is not offered or accepted, or the relief is not granted, INS serves the aliens with an "Order To Show Cause", which requires the alien to appear at a hearing to show cause why deportation should not occur. The Order To Show Cause is also filed with the Executive Office for Immigration Review (EOIR), which notifies the alien of the time and place of the hearing.

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

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

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

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

1. grant the request, in which case the alien remains in the country;
2. deny the request, in which case the alien is ordered deported and must leave the country or appeal the decision to the Board of Immigration Appeals (BIA) within

10 days; or

3. grant voluntary departure and issue an alternate order of deportation so that if the alien does not depart by a specified date, INS can apprehend and deport the alien without further proceedings.

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

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

## Appendix VII

### Conditions of Appeal

(Selected sections from the General Accounting Office, Immigration Control: Deporting and Excluding Aliens From the United States, 10/89)

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

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

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

#### 1. Voluntary Departure

This benefits the government by avoiding much of the administrative and judicial effort and expense connected with formally deporting an alien. It relieves the alien from the consequences of being deported--being barred from reentry for 5 years and subject to felony prosecution if reentry is made or attempted after being deported. It also allows the alien to apply for readmission to the United States. (Convicted criminal aliens are not eligible for this form of relief, however charges may not be brought against an alien in some cases if they agree to depart voluntarily.)

#### 2. Suspension of Deportation

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

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

themselves or family members.

### 3. Adjustment of Status

Under Section 245 of the INA, nonimmigrant aliens who are in the country and meet the requirements for an immigrant visa can have their status adjusted to that of lawful permanent resident without having to follow the usual procedure of traveling abroad to receive an immigrant visa. Aliens may seek adjustment of status before or during deportation proceedings. In the latter case, the application is treated as a request for relief from deportation.

### 4. Registry

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

### 5. Asylum

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

If the aliens' applications are approved, they are granted status as asylees for 1 year, after which they may apply for legal permanent residence.

### 6. Withholding of Deportation

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

7. Waiver of Deportation

Section 212(c) of the INA allows the Attorney General to waive deportation for a lawful permanent resident who has maintained a lawful domicile for 7 consecutive years. There is no express requirement that the alien demonstrate good moral character or extreme hardship.

8. Stay of Deportation

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

9. Additional Means of Precluding Deportation

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