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**THE CRIMINAL ALIEN PROGRAM
(THE SPECIAL DEPORTATION HEARING PROGRAM)
AT THE DOWNSTATE CORRECTIONAL FACILITY
JULY 1986 - JANUARY 1992**

EXECUTIVE SUMMARY

Since July 1986, the Department has been cooperating with the Executive Office for Immigration Review (EOIR) and the United States Immigration and Naturalization Service (INS) to facilitate the initiation of deportation proceedings against incarcerated aliens. This joint effort has resulted in the development of a model program entitled the Criminal Alien Program (CAP).

Under the Criminal Alien Program, EOIR assigns administrative judges to hear deportation cases prepared by INS attorneys. Between July 1986 and March 1991, these deportation proceedings were conducted for one week every other month at the Downstate Correctional Facility in Fishkill, New York. Between April 1991 and January 1992, the schedule of deportation hearings was expanded to one week every month at the Downstate Correctional Facility to handle the increasing number of cases.

Between July 1986 and January 1992, deportation hearings were held for 1,373 foreign-born inmates. Of these 1,373 inmates, 961 have been discharged from DOCS custody while 412 remained in the Department's custody as of January 1992.

Of the 961 inmates discharged from DOCS custody, 68 percent (or 657) were ordered deported, while 30 percent (or 293) did not have their case decided at the time of their release. Deportation proceedings were terminated for eleven inmates prior to their release.

Based upon the successful operation of this model program, EOIR requested the Department's cooperation in the expansion of this process to additional hearing sites in 1992. This program expansion will be the subject of future reports.

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THE CRIMINAL ALIEN PROGRAM

Introduction

In January 1992, there were 57,815 inmates under the custody of the Department of Correctional Services (DOCS). Approximately 12 percent (7,168) of these inmates claimed foreign-birth. Many of these foreign-born inmates are subject to exclusion or deportation from the United States.

The number of foreign-born inmates under DOCS custody in January 1992 represents an increase of 173% (or 4,539) over the 2,629 foreign-born inmates under custody on April 1, 1985. This rapid growth in the foreign-born under custody population has placed an additional burden on already strained DOCS resources. It is against this backdrop that DOCS has been proactive in exploring ways of mitigating the effects of its burgeoning foreign-born under custody population.

Since July 1986, the DOCS has been cooperating with the Executive Office for Immigration Review (EOIR) and the United States Immigration and Naturalization Service (INS) to facilitate the initiation of deportation proceedings against incarcerated aliens. This joint effort has resulted in the development of a model program entitled the Criminal Alien Program (CAP).

Under the Criminal Alien Program, EOIR assigns administrative judges to hear deportation cases prepared by INS attorneys. These deportation proceedings have been conducted at the Downstate Correctional Facility in Fishkill, New York.

This report concerns the operation of this model program from its inception in July 1986 to January 1992. In 1992, this program was expanded to include additional hearing sites at the request of EOIR based upon the successful performance of the Downstate pilot project.

Characteristics of Foreign-Born Inmates

The purpose of this section is to describe the characteristics of the foreign-born inmates processed under the Criminal Alien Program. To place this profile in perspective, the characteristics of CAP processed inmates will be compared with the characteristics of the general foreign-born under custody population in January 1992. The characteristics that will be examined are: gender, age at time of admission to DOCS, region of birth, and alien status.

In the under custody population, 95% of the 7,168 foreign-born inmates were male and 5% were female. In contrast, the percentage of foreign-born male inmates processed under CAP was slightly higher than their proportion in the general under custody population; 98% were male and 2% were female.

A comparison of the age profile of the foreign-born under custody population and CAP processed inmates suggests that there is little difference between these two groups. The data presented in Table 1 show that the majority of both inmate groups are between the ages of 21 and 44. CAP processed inmates are less likely than the general foreign-born under custody inmates to be in the 18 to 20 year old age group

and more likely to be in the 21 to 29 year old age group. This age group difference, however, is small and does not obscure the overall similarity between CAP processed inmates and foreign-born inmates under custody in terms of age at admission.

Turning now to the region of birth, the overall pattern of the region distribution is quite similar for both the under-custody and CAP processed foreign-born inmates. Approximately four-fifths of the inmates in each foreign-born group (i.e., 80% of the under custody group and 84% of the CAP group) claim Caribbean or South American origin (see Table 2). As the data in Table 2 show, the difference between the under custody and CAP processed groups is that a larger proportion of the under custody foreign-born inmates originated in the Caribbean (63%) than did the CAP processed inmates (51%). Conversely, a larger percentage of the CAP cases originated in South American countries (33%) than the overall foreign-born inmate under custody population (17%). This finding implies that Caribbean-born inmates are underrepresented in the CAP group while South American-born inmates are overrepresented in the CAP group.

A closer examination of these regional differences reveals that approximately 90% of the Caribbean foreign-born under custody group claim birth in one of four countries: 46% - the Dominican Republic; 26% - Jamaica; 14% - Cuba; and 4% - Haiti. Although 88% of CAP processed inmates also claim birth in the same four countries, the distribution of inmates originating in those countries differs slightly from the distribution observed for the under custody group. The distribution for CAP processed inmates is as follows: 55% - the Dominican Republic; 26% - Jamaica; 2% - Cuba; and 5% - Haiti.

The reason that inmates of Cuban origin are underrepresented in the CAP group is that repatriation agreements between the United States and Cuba have been subjected to repeated renegotiations. As a result, there has not been a continuous repatriation procedure in place. Therefore, it is likely that the constraints placed upon Cuban repatriation account for the small number of Cuban-born inmates in the CAP group.

Similar differences are observed between foreign-born inmates under custody and CAP processed inmates claiming birth in South America. For each group, nine out of ten foreign-born inmates claim origin in one of three countries; Colombia, Guyana, and Ecuador. For the under custody group, 61% claim birth in Colombia, 18% claim birth in Guyana, and 11% claim birth in Ecuador. For the CAP processed group 79% originated in Colombia, 8% in Ecuador, and 5% in Guyana. These data clearly show an overrepresentation of Colombian-born inmates in the CAP group, while inmates born in Guyana and Ecuador are underrepresented.

Finally, with regard to the alien status of foreign-born inmates, the data in Table 3 suggest that illegal aliens are the most likely group to be processed under the Criminal Alien Program. While 20% of all foreign-born inmates under custody are classified as illegal aliens, 58% of the CAP processed inmates were illegal aliens. Legal permanent residents constituted approximately one third of both the total foreign-born inmate population and CAP cases.

SPECIAL DEPORTATION HEARINGS

Hearing Structure At Downstate From July 1986 To January 1992

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

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

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

Deportation hearings were scheduled for every other month between July 1986 and March 1991, the hearing schedule was increased to once a month in April 1991. This increase in the number of hearings was made **necessary** by the growing number of foreign-born inmates under the Department's custody. Additional hearings were made **possible** by an increase in the number of cases prepared by INS attorneys, the assignment of additional CAP hearing dates to the EOIR hearing calendar, and the cooperation of the Department in providing the space and support necessary to implement the new hearing schedule.

Hearing Dispositions

Between July 1986 and January 1992, deportation hearings were held for 1,373 foreign-born inmates. Of these 1,373 inmates, 961 (70%) have been discharged from DOCS custody while 412 (30%) remain in DOCS custody as of January 1992. The increased hearing schedule in 1991 was a major factor contributing to the number of cases currently in this process.

The information presented in Table 4 crossclassifies the custody status of inmates who have been subjected to special deportation hearings with the results of their last hearing. Of the 412 inmates under custody, approximately 54 percent (or 224) had their last hearing adjourned (i.e., their case will be continued at a future hearing), whereas 44% (or 183) were ordered deported. Only five inmates under custody had their cases terminated.

Of the 961 inmates discharged from DOCS custody, 68 percent (or 657) were ordered deported, while 30 percent (or 293) did not have their case decided at the time of their release. Deportation proceedings were terminated for eleven inmates prior to their release (see Table 4).

Number of Adjournments

Of the 1,373 inmates who had deportation hearings, 502 (or 37%) had their cases decided at the first hearing (see Table 5). Of the cases decided at the first hearing, 495 were ordered deported, while the cases against seven inmates were terminated.

Although a substantial number of cases were decided at the first hearing, 871 cases (or 63%) were adjourned at least once. Adjournments can occur for a variety of reasons. For example, an inmate may want to obtain or change legal representatives or the government or inmate representatives may require more time to prepare their case.

Of the 871 cases that were adjourned at least once, 566 had been released from DOCS custody as of January 1992 and 305 remained in custody. Fifty-two percent (or 293) of the 566 releasees were released before their case was decided (see Table 6).

CONCLUSION

The Criminal Alien Program is designed to facilitate the process of deportation of criminal aliens. It is a model program that requires the interaction and cooperation of two federal agencies (EOIR, and INS) and the New York State Department of Correctional Services.

Based upon the success of the operation at the Downstate Correctional Facility, the Criminal Alien Program was expanded to include additional hearing sites in 1992. Future reports concerning the Criminal Alien Program will pertain to the expanded program.

TABLE 1

**COMPARISON OF FOREIGN-BORN INMATES
UNDER DOCS CUSTODY JANUARY 1992
WITH FOREIGN-BORN INMATES PROCESSED
UNDER THE CRIMINAL ALIEN PROGRAM
BY AGE AT TIME OF ADMISSION**

AGE AT ADMISSION	PERCENT OF FOREIGN-BORN INMATES UNDER CUSTODY	PERCENT OF FOREIGN-BORN INMATES PROCESSED UNDER CAP
14-17 Years Old	2%	1%
18-20 Years Old	8%	3%
21-29 Years Old	43%	50%
30-44 Years Old	41%	43%
45-54 Years Old	5%	4%
55 Years or Older	1%	1%
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TOTAL	100% (7,168) ^{a/}	100% (1,373) ^{a/}

a/Total number of inmates.

Percents may not sum to 100 due to rounding.

TABLE 2

COMPARISON OF FOREIGN-BORN INMATES
UNDER DOCS CUSTODY JANUARY 1992
WITH FOREIGN-BORN INMATES PROCESSED
UNDER THE CRIMINAL ALIEN PROGRAM
BY REGION OF BIRTH

REGION OF BIRTH	PERCENT OF FOREIGN-BORN INMATES UNDER CUSTODY	PERCENT OF FOREIGN-BORN INMATES PROCESSED UNDER CAP
North America	2%	1%
Caribbean	63%	51%
Central America	7%	7%
South America	17%	33%
Europe	6%	4%
Africa	1%	1%
Near East	1%	1%
Asia	3%	2%
South Pacific	*	0%
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TOTAL	100% (7,168) ^{a/}	100% (1,373) ^{a/}

* Less than one-half of one percent.

^{a/}Total number of inmates.

Percents may not sum to 100 due to rounding.

TABLE 3

**COMPARISON OF FOREIGN-BORN INMATES
UNDER DOCS CUSTODY JANUARY 1992
WITH FOREIGN-BORN INMATES PROCESSED
UNDER THE CRIMINAL ALIEN PROGRAM
BY ALIEN STATUS**

ALIEN STATUS	PERCENT OF FOREIGN-BORN INMATES UNDER CUSTODY	PERCENT OF FOREIGN-BORN INMATES PROCESSED UNDER CAP
Not yet known	38%	9%
Illegal alien	20%	58%
Legal permanent resident	33%	32%
Naturalized citizen	3%	1%
Mariel Cuban	6%	*
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TOTAL	100% (7,168) ^{a/}	100% (1,373) ^{a/}

* Less than one-half of one percent.

^{a/}Total number of inmates.

Percents may not sum to 100 due to rounding.

TABLE 4**INDIVIDUALS CALENDARED FOR
SPECIAL DEPORTATION HEARINGS
JULY 1986 - JANUARY 1992****HEARING DISPOSITIONS**

CUSTODY STATUS	AWAITING HEARING OR ADJOURNED	ORDERED DEPORTED	DEPORTATION PROCEEDINGS TERMINATED	TOTAL
Currently Under DOCS Custody	224 54%	183 44%	5 1%	= 412
Discharged From DOCS Custody	293 30%	657 68%	11 1%	= 961
Total Number of Individuals	517 38%	840 61%	16 1%	= 1,373

Percents may not sum to 100 due to rounding.

TABLE 5

**NUMBER OF ADJOURNMENTS IN
DEPORTATION CASES
AS OF DECEMBER 1991**

<u>NUMBER OF ADJOURNMENTS</u>	<u>FREQUENCY</u>	<u>PERCENT</u>
Decided at First Hearing	502	37%
1 Adjournment	369	27%
2 Adjournments	282	20%
3 Adjournments	116	8%
4 Adjournments	52	4%
5 Adjournments	29	2%
6 Adjournments	11	1%
7 Adjournments	10	1%
8 Adjournments	1	*
9 Adjournments	1	*
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TOTAL	1,373	100%

* Less than one-half of one percent.

Percents may not sum to 100 due to rounding.

TABLE 6**PERCENT DISTRIBUTION OF NUMBER OF ADJOURNMENTS BY
HEARING DISPOSITION CONTROLLING FOR CUSTODY STATUS
AS OF JANUARY 1992****HEARING DISPOSITION**

CUSTODY STATUS	NUMBER OF ADJOURNMENTS	ADJOURNED	ORDERED DEPORTED	TERMINATED	TOTAL
Under Custody		224	183	5	412
	No Adjournments:				
	Decided at		99%	1%	100%
	First Hearing		(106)	(1)	(107)
	One or More	73%	25%	1%	100%
	Adjournments	(224)	(77)	(4)	(305)
Released		293	657	11	961
	No adjournments:				
	Decided at		98%	2%	100%
	First Hearing		(389)	(6)	(395)
	One or More	52%	47%	1%	100%
	Adjournments	(293)	(268)	(5)	(566)

Percents may not sum to 100 due to rounding.