

TESTIMONY

OF

Michael A. Pearson

EXECUTIVE ASSOCIATE COMMISSIONER

Field Operations

IMMIGRATION AND NATURALIZATION SERVICE

REGARDING

THE INSTITUTIONAL REMOVAL PROGRAM

BEFORE

THE

SUBCOMMITTEE ON IMMIGRATION AND CLAIMS

HOUSE JUDICIARY COMMITTEE

2237 Rayburn House Office Building

9:30 AM

September, 18, 1998

Introduction

On behalf of the Immigration and Naturalization Service (INS), I am pleased to have this opportunity to testify on the Institutional Removal Program (IRP), a program that facilitates the removal of criminal aliens from the United States. This Administration has made the identification and removal of criminal aliens a high priority and is moving on several fronts to accomplish this priority. We have negotiated with state governments to work effectively and efficiently in state correctional facilities, and have revised how the Service assigns and uses our investigative personnel. We have asked for and received from Congress additional personnel and resources to enhance the Institutional Hearing Program (IHP). We have hired, trained, and deployed these resources to enhance IHPs in several states and in the Federal Bureau of Prisons (BOP). Our IHP removals have increased each year.

The IHP is a cooperative effort among the INS, the Executive Office for Immigration Review (EOIR), and federal and state correctional agencies to process convicted criminal aliens for removal while they are serving their prison sentences. First established under the Immigration Reform and Control Act of 1986, the goal of the IHP is to complete the administrative determination of deportability prior to completion of the alien's sentence, enabling more effective use of INS detention space and significantly reducing the threat to public safety by effecting immediate deportation upon completion of the sentence.

For many years, the Institutional Hearing Program operated on an ad hoc basis. INS worked informally with corrections agencies and EOIR to set up periodic hearings in institutions with large criminal alien populations. Congress recognized the efficiency of this procedure, and included a provision in the Immigration Reform and Control Act of 1986 requiring that deportation proceedings for deportable criminal aliens begin as soon as possible after their conviction. The Anti-Drug Abuse Act of 1988 defined certain crimes as aggravated felony, and required that the "Attorney General provide for the initiation and to the extent possible, the completion of deportation proceedings" for any alien convicted of an

aggravated felony. INS instituted programs within current resources to implement these congressional mandates. We soon recognized, however, that the IHP process is labor intensive, and that the sheer number of criminal aliens in state and federal prisons required additional resources. In 1993, INS began to develop cost estimates of the resources that would be needed to fully implement IHP programs, and those estimates were included in the President's FY 1995 budget.

Congress also recognized that for the IHP to be truly effective, INS needed the full cooperation of participating states. Thus, a provision was included in the Immigration Act of 1990 requiring each state to establish a plan to provide INS with notice of conviction of aliens who violated state criminal laws. Further, the Violent Crime Control and Law Enforcement Act of 1994 authorized reimbursement to State and local governments for the costs associated with incarceration of undocumented criminal aliens, and funds were made available in appropriations for this purpose.

In short, Congress recognized that both the Federal Government and the states have roles to play in the IHP process, and resources were made available to ensure an active partnership between both players.

In July 1997, INS testified before this Subcommittee on the identification and removal of criminal aliens. An important element of that testimony was the Service's efforts at that time to implement enhanced IHPs in states with large numbers of criminal aliens in their prison populations. In FY 1996, Congress had appropriated significant resources for IHPs in the Federal Bureau of Prisons, and in the seven states identified in 1990 as having the highest populations of incarcerated foreign-born nationals: California, Texas, New York, Florida, Illinois, New Jersey and Arizona. We reported last year on how we had used those resources and on additional improvements we hoped to make. The General Accounting Office (GAO) also testified last year and made recommendations for improvement of the IHP.

I am happy to report today that we have made significant progress in many areas of the IHP since July of 1997. In FY 1996, INS removed 37,067 criminal aliens, 10,327 of whom had completed the IHP process. Criminal removals in FY 1997 totaled 51,141, of which 14,851 were IHP removals. IHP removals for FY 1997 showed a 44% increase over FY 1996. This significant increase between FY 1996 and FY 1997 is due to the large number of new IHP-related positions that were recruited, hired, and trained in FY 1996. Through the third quarter of FY 1998, IHP removals totaled 11,570. We project a FY 1998 IHP removal total of 15,700, which would be a 5.7% increase over FY 1998.

The workload is still significant. At the beginning of 1998, more than 77,300 foreign-born nationals were incarcerated in state correctional facilities. Of these, about 80 percent were incarcerated in seven states: California, Texas, New York, Florida, New Jersey, Arizona, and Illinois. INS estimates that 80 percent or 61,800 of the foreign-born inmates in state institutions are subject to deportation. There are currently 28,050 sentenced non-citizen inmates in Federal institutions, up from 24,470 last year.

Institutional Removal Program (IRP)

GAO's study focused on the Institutional Hearing Program. The IHP alone, however, does not reflect the full range of work that is performed by INS in prisons and jails. Our intent is to identify and process through the Institutional Removal Program (IRP) as many removable inmates as possible so that they are not released to the streets. As part of the IRP, we are making extensive use of alternatives to immigration hearings that are now available, such as administrative removal and reinstatement of prior orders of removal. GAO concludes that our completion rate may have been as high as 54% (as opposed to 48%) had those methods of removal been taken into account in their study. The IRP has also established a mechanism which gives us the capability to track all the institutional work we are doing, and capture data for those institution cases on which INS successfully obtains an order of removal before release or within one day of release (our "fast track" cases). Our automated systems are being reconfigured to handle the

new data elements beginning with the new fiscal year. We will continue to capture and report statistics on the IHP, but IHP will be only one element under the IRP umbrella.

Accomplishments in the IHP

The INS and EOIR have been working with the BOP and the corrections authorities in the States of California, Texas, New York, Florida, New Jersey, Arizona, Illinois, Pennsylvania and New Mexico to enhance the capacity of the IHP to identify and process deportable criminal aliens. Now I would like to give you examples of several enhanced IHPs where our increased efforts have resulted in real gains in productivity.

New York

Of the IHP resources provided in FY 1995 and 1996, 31 positions were deployed to the New York State system. Since the addition of the resource enhancements our productivity has improved. GAO's data show that for their six-month study period in 1997, 1,209 potentially deportable cases were released by New York; of those, 57% (686) completed the IHP, which is one of the highest completion rates reported by GAO. Our data for 1998 are consistent with GAO's finding. Through three-quarters of this fiscal year, 823 criminal aliens have been removed through the IHP.

California

California has the largest population of foreign-born criminal aliens serving sentences in its prison system, currently more than 30,000. In response, INS has devoted a significant number of staff to the program. During the first three-quarters of FY 1998, this staff interviewed more than 13,000 foreign-born nationals in the California IHP, and prepared charging documents on 9,962 (not all foreign-born

inmates interviewed are deportable). Unlike most of the other IHPs, cases in California are heard 30-40 days prior to their release from prison. Our data reflect 3,500 removals through the third quarter of FY 1998. GAO reports a completion rate of 46% for the California State IHP. We recognize the need for improvements in some areas and we are working within INS and with the State to further improve the process.

We are continuing to work closely with the California Department of Corrections (CDC). CDC has accommodated INS in consolidating four of the most remote CDC release sites. We intend to continue our discussions with CDC to cut the number of release sites, which would allow us to become more effective. We also hope to reach an agreement with CDC on a mechanism that would funnel inmates with administrative removal orders and reinstated orders to specific release points.

The INS in California is doing a substantial amount of work not only in the State prison system, but in the County jails as well. INS has county jail projects at seven of the largest county jails: Los Angeles, San Diego, Orange, Ventura, San Bernardino, Riverside, and Santa Barbara. This means illegal criminal aliens are interviewed and processed while at the County level before going to the State prison (should they go to State prison). In FY 1998 INS will process approximately 13,500 illegal aliens from these seven County jail projects. Many times these cases are granted voluntary departure, because they are convicted of a misdemeanor or less serious crimes. Voluntary removals do not count as IHP removals. However, INS must continue to handle large numbers of aliens this way because we do not have sufficient resources or bedspace to formally remove all the illegal aliens whom we encounter in the criminal justice setting.

Texas

Texas continues to be a leader in the IHP realm. On March 21, 1995, INS approved the Texas State Enhanced IHP Plan. The close working relationship that INS developed with the Texas Criminal

Justice System (TDCJ) is illustrated by TDCJ's commitment to build a multimillion dollar facility at Huntsville, which is leased by INS for inmate processing and hearings. Multiple intake, hearing, and release sites for foreign-born inmates in the State of Texas were consolidated into this single site. Permanent INS and EOIR staff are assigned to this facility. An Immigration Judge is available to conduct hearings on a daily basis when necessary. This ensures that foreign-born inmates are interviewed at intake, and/or release, and placed in removal proceedings, if applicable.

During the first three-quarters of FY 1998, INS agents interviewed 3,372 foreign-born inmates of which 2,733 were identified by INS as aliens amenable to removal proceedings. INS agents also prepared 2,625 charging documents. According to GAO's data, the percentage of potentially deportable aliens completing the IHP increased from 21% in the prior 1995 study to 49% in the follow-up 1997 review. In FY 1998, through the third quarter, that number has grown to 75%. We believe that the institution of a single intake and release site in the Texas IHP led to this dramatic improvement in results.

Florida

Perhaps the state IHP where we have made the greatest improvement since last year is Florida. Based on the results of our one-year evaluation, a senior staff officer from Headquarters was temporarily reassigned to the Miami District Office to review the program and suggest improvements. The result was a six-month pilot project, the Florida Institutional Removal Support Team (FIRST), which ran from March through August. The purpose for the creation of FIRST was to establish a single division responsible for the identification, processing, and removal of all removable criminal aliens housed in Florida State correctional institutions. When compared with the same six-month periods in 1997, IHP removals increased 57%. INS plans to audit the FIRST pilot in October 1998.

INS and EOIR now meet monthly with Florida Department of Corrections (FDC) staff, and we

are currently working to restructure and improve the existing Memorandum of Understanding. In collaboration with FDC and EOIR, we plan to expand the number of sites where remote hearings are conducted using video teleconferencing (VTC) equipment. We also plan to test VTC to reduce the need for an on-site INS presence at one of Florida's reception sites.

Federal

In FY 1995 and FY 1996, INS was provided resources for enhancement of the Federal IHP. In FY 1996, INS, the BOP, and EOIR concluded a formal agreement that lays out a comprehensive and nationwide plan to identify, process and conduct hearings on deportable inmates in federal custody. INS and BOP agreed on 15 institutions where newly sentenced non-United States citizen inmates are interviewed by INS staff. These 15 institutions also serve as hearing sites for EOIR. We have made use of video teleconferencing equipment at the more remote sites to reduce travel associated with the hearings, and to address security and efficiency concerns. INS and BOP have agreed that 28 of BOP's institutions will serve as release sites for the removal population.

Implementation of the Federal IHP enhancements are ongoing. In developing the Federal IHP enhancement plan, INS, BOP and EOIR recognized that full implementation would require several years because of the complexity of the initiative, and the number of INS districts, EOIR courts, and BOP institutions involved. The 1996 agreement between the three agencies stated that implementation would proceed on a site-by-site basis, and would take 2-3 years. We are about to bring the final VTC hearing site on-line. Liaison on IHP issues is very strong among INS, BOP, and EOIR. The three agencies meet regularly to address problems and discuss issues of mutual concern.

INS data reflect that, in FY 1996, 2,652 aliens who had been issued orders under the Federal IHP were removed from the United States. In FY 1997, that number grew to 4,497 removals. Through three-

quarters of FY 1998, we have achieved 4,210 removals through the Federal IHP. Improvements in the Federal IHP are also reflected in GAO's data, which indicate a completion rate of 33% in 1995 compared with a completion rate of 48% in 1997.

Response to GAO Review and Testimony

Last week, GAO staff met with INS staff to review the results of their follow-on analysis. Being relatively new to INS, I have learned a great deal about the shortcomings and the potential of the IHP. I would like to comment briefly and give my perspective on several of their findings.

Identification of Deportable Criminal Aliens Including Aggravated Felons

At last year's hearing, GAO presented results from their analysis of approximately 17,000 foreign-born individuals released from prisons in the last half of FY 1995. One of GAO's findings was that INS failed to identify many deportable criminal aliens, including 635 aggravated felons.

In November 1997, GAO initiated a follow-up IHP audit, and began a data collection effort. GAO requested and received data files from California, Florida, New York, Texas and the Federal Bureau of Prisons (BOP) on foreign-born inmates released from those prison systems from January-June 1997. GAO then matched the prison data files against INS and EOIR databases to determine the disposition of the cases. The purpose of the data collection and analysis was to determine if INS had made improvements in IHP processing.

Overall improvement occurred in the percentage of released inmates who had completed the IHP, from 43 percent in 1995 to a range of 48-54 percent in 1997. However, there was also an increase in the number of aggravated felons reported to have been released, and this finding was very disappointing to us

at INS. I would like to point out, however, the definition of aggravated felon was broadened by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and more criminals aliens are now classified as aggravated felons. Additionally, the sample size increased by 14.3 percent, from 16,694 foreign-born releases from BOP and the four states surveyed to 19,074.

The largest jurisdictions where we have enhanced IHPs are California and the Federal Bureau of Prisons, so I will discuss them with regard to the 1,198 repeated aggravated felon releases.

There are several possible reasons for an increase in California aggravated felon releases. GAO reported 6,008 potentially deportable releases during the 1997 data collection period compared to 5,113 potentially deportable releases in 1995, an increase of 17.5% in two years. The State of California has yet to agree to an Enhanced State IHP Plan. The State has not reduced the number of intake sites as requested; rather, California has increased the number of intake sites from 11 (for which INS received resources in 1996) to the current 15. Because of the lack of coverage at some intake sites, a backlog of unprocessed cases developed. On May 1, 1998, INS and the California Department of Corrections determined that 4,793 inmates housed in 32 CDC facilities did not have documented INS determinations. Without an INS detainer, these inmates would not be moved to hearing sites, and could potentially be released to the community without notification to INS. To address this problem, we have developed a plan that is expected to eliminate the backlog of unprocessed cases.

Similarly, there was an increase in population in the Federal IHP. The sample in 1997 was about 6% larger than in 1995, which might account for some increase in aggravated felon releases. The other significant factor is the timing of the Federal IHP enhancement implementation. BOP's Operations Memorandum activating the hearing and release sites became effective on January 1997. Therefore, inmates released from January - June 1997 would most likely have been designated in 1996 or earlier, and would not necessarily have been designated to one of the IHP sites in place at the time.

As I indicated before, some aliens are inappropriately released because they have not come to INS' attention. Thus, while they may be subject to removal, these aliens have not been interviewed by INS and, where appropriate, processed for removal. Unless INS identifies these inmates, and lodges detainers to pick them up upon release, they may be released to the street upon completion of their sentences. There is a backlog of such un interviewed aliens in State and Federal custody. INS, as noted earlier, implemented a program to identify and interview any un interviewed foreign-born inmates incarcerated in the seven states with the highest concentrations of foreign-born inmates (Arizona, California, Florida, Illinois, New Jersey, New York, and Texas). Our regions have framed plans to handle backlogs in the states of New York, Florida, California, and Texas. We are satisfied that no significant backlogs exist in Illinois, New Jersey and Arizona. Since June 1, California has reduced their backlog from 4,993 to 3,688 cases, a reduction of 26%. In Florida, the estimated backlog of 1,749 cases has been reduced by 416 as of September 1, a reduction of 76%. We are working closely with Texas officials to determine the location of inmates needing to be interviewed and, if appropriate, processed for removal; the estimated size of the backlog in Texas is 2,500 cases. We have reduced the backlog in New York by 21%, from 1,568 to 1,244 cases.

The backlog reduction project will not necessarily result in a short-term increase in criminal removals, however, because many of the backlogged cases are not scheduled for release until after the year 2000.

INS is Piloting a BOP Nationwide DataBase

INS has begun an effort to establish an automated Federal IHP tracking system. This system, the 1998 Criminal Alien Investigations System (CAIS98), accepts inmate information from BOP's Sentry system, and can distribute that data to INS staff at the various Federal sites. The system is now in our

Federal IHP sites at Oakdale, LA and Allenwood, PA. We expect deployment to one additional site this fiscal year and --contingent on the FY 1999 appropriations-- to all federal sites by October 1999.

CAIS98 is a module of ENFORCE (the enforcement case tracking system), and as such, the data it contains resides on the Enforcement Integrated Database (EID). Rather than create another stovepipe system, INS chose to proceed carefully and deliberately to develop and implement a system that would be a subset of a larger enforcement database and accessible to all INS enforcement users. While it would probably have been quicker to implement a stand-alone system using off-the-shelf software, we believe that the interests of the program are better served by an integrated system. CAIS98, when fully implemented, will provide numerous benefits: (1) the ability to accept data downloaded from BOP or a state prison system; (2) a forms generation capability; (3) the ability to upload data to, and accept data from, the Deportable Alien Control System; and (4) a database to track the status of, and answer queries on, the universe of foreign-born prison inmates.

In developing functional requirements for CAIS98, INS solicited input from INS staff in state as well as Federal IHP sites. Requirements for the state IHPs are essentially the same as those for the Federal IHP. BOP has been a very willing partner in supplying initial data from Sentry on new BOP commitments, and on status updates. States have not had any great difficulty in providing data in a specific format for reimbursement under the State Criminal Alien Assistance Program, and we expect that they will be willing and able to provide it for the foreign-born inmate database.

INS Is Working to Establish Controls to Ensure That Proceedings for Aggravated Felons Are Initiated Before Prison Release.

Generally, penal authorities provide INS with a master list of suspected "foreign born" inmates who are received at prison intake facilities. Trained INS personnel conduct interviews of the "foreign

born" population and issue immigration detainers. In some cases, charging documents for aliens who are subject to removal are issued simultaneously. Generally, cases are prioritized both by INS and EOIR by imminence of release date from incarceration. For purposes of INS processing and presentation to EOIR, and in terms of EOIR scheduling the case for hearing, an alien whose release date is imminent will be processed and heard prior to the case of an alien whose release is not expected for several years.

During the course of their audit, GAO asked INS what priority, if any, is given to initiation and completion of institutional hearings for aggravated felony offenders over other criminal aliens. GAO has expressed concerns, which are shared by INS, over the release from incarceration of some aggravated felony offenders, without any processing by INS.

Prioritization of institutional cases by release date is meant to ensure that the greatest number of cases possible are initiated and even concluded prior to the alien's release. In order to minimize the number of cases that "fall through the cracks", INS is committed to identifying all institutionalized criminal aliens as they are received at intake by State departments of correction and the Bureau of Prisons. The vast majority of these cases are aggravated felony offenders and the remaining cases are serious or repeat offenders. When an INS agent is assigned to identify criminal aliens within a particular facility, it would be contrary to the intent of Congress and to common sense to interview a portion of the new intake population (based on crime) rather than identify all suspected criminal aliens. In fact, in a limited number of cases, from the information available when the investigator reviews the list and the court commitment order, it may not be possible to ascertain (without access to court records such as an indictment) whether or not the alien is indeed an aggravated felon.

There will always be some cases that will not be fully processed prior to release from incarceration. There are various reasons, primarily resource based, why some aggravated felony offenders are released from incarceration without having been identified and fully processed by INS, including: the

"backlog" of cases predating the enhancement of the IHP; the growing criminal alien population in state penal facilities and the Bureau of Prisons; or lack of cooperation from some penal authorities in operating and enhancing these programs.

Resource Issues Related to IHP

In their discussion of resources, GAO has two specific concerns: the high attrition rate for the Immigration Agent (IA) position; and creation of a workload model to validate current and future staffing needs for the IHPs.

The Immigration Agent (IA) position was established several years ago as part of the INS Investigations program. The work was classified as GS-9, based on worksite enforcement tasks as well as criminal alien removals. Currently, the loss rate for Immigration Agents (including reassignment to other INS positions, transfer to jobs outside INS, resignations, etc.) is approximately 40%. The majority of the IA's do not leave the agency. In fact, of 92 losses, 76 or 83% stayed within INS. Of those who took other INS positions, 87% either went into Special Agent positions or Deportation Officer positions, both of which have higher promotion potential than the Immigration Agent position.

The turnover in the positions results for several reasons: (1) full performance level of the IA position is GS-9 versus GS-12 for Deportation Officers and Special Agents, and the IA position is thus viewed as a "dead end" job; and (2) the work environment is typically a prison or jail --not always what the employees anticipate when they decide to work for the INS.

To address the turnover issue, the Office of Investigations, Programs has sponsored working group sessions to develop and recommend solutions for the Commissioner. As a result, the Office of Human Resources and Development will conduct a study of the Immigration Agent occupation to

determine the appropriate course of action. The study is expected to be completed by the end of February 1999. We are also reviewing the organizational placement of the IHP function within INS.

The other primary resource concern that GAO raised was our lack of a workload analysis model that could be used to determine the appropriate staffing level for existing and future IHPs. The IHP Workload Analysis Study was completed in June 1998. Briefings for the Executive Staff have not yet been completed. Once the model has been completely briefed and accepted, it will be used for future resource projections. The model was designed by identifying all of the tasks it takes to identify and process a criminal alien and the personnel needed to do the job. The model's matrix indicates how many people, by job, are needed to process a specific number of criminal aliens.

The analysis part of the model also identified 14 areas that affect productivity in criminal alien processing. Improvement in these areas, which are being worked, will change the model's base matrix. Therefore, once the model is accepted and employed, it will need to be revalidated periodically.

Management Oversight

When I came to INS in December, I was very pleased to discover the fine job the agency does in most areas. I and the team I am assembling under the leadership of Commissioner Meissner are confident that given time, and with lots of hard work and the continued support of Congress, we can make a difference; that we can expand our successes.

We project that we will achieve 15,700 removals this year. This is approximately a 6% increase over last year's IHP removals, but 7% short of our FY 1998 goal of 16,800. The primary reason for this shortfall is that our transition from the IHP to the IRP began in June instead of October as we had originally planned. At the mid-year review, we recognized that we would be unlikely to meet the target,

and tasked our regional managers to develop plans to increase IRP removals. While implementation of these plans will not help us this year, I think they will have great utility in helping us achieve our FY 1999 goals.

Our October 1997 memorandum to field managers did address and resolve the important issue of how Special Agents should be used in an IHP setting. While we have not addressed the issue of whether or not Immigration Agents were replacements for or supplements to Special Agents in doing IHP work, I believe this issue will be resolved when we complete our staffing review, which includes what is the proper placement for the IHP within our management structure.

For the reasons indicated in the GAO testimony, we were delayed in getting IHP Servicewide removal goals to regional managers, which in turn delayed them getting to district managers. This was caused by the transition from our former priorities management system to a results-oriented system so that we would be more consistent with the requirements of the Government Performance and Results Act (GPRA). I am confident that we will be informing all levels of field management of our IHP goals very early in the new fiscal year.

Conclusion

We are making progress on many fronts, but we are not where we would like to be in the IHP program. We still have many problems to be solved. Still, we are making strong progress on many fronts. For example, we are optimistic that our backlog reduction projects in four states will have an impact on the number of unidentified and unprocessed cases released by the states. Further, we will move quickly to review the cases of the potential 1,198 aggravated felons that GAO believes were released from prison without INS action. We will identify, and make every effort to locate and remove those amenable to removal proceedings.

The Justice Department strongly supports the IHP approach. We believe the program works well when all parties involved work in concert and advance the goals of the program.

I thank the Subcommittee for your attention and am prepared to answer your questions.