



U.S. Department of Justice  
Office of the Inspector General  
Evaluation and Inspections Division

# **THE IMMIGRATION AND NATURALIZATION SERVICE'S REMOVAL OF ALIENS ISSUED FINAL ORDERS**

**Report Number  
I-2003-004**

**February 2003**

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## EXECUTIVE DIGEST

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Each year, millions of aliens attempt to enter the United States without proper documentation, or enter legally but overstay or violate their visas. In March 1996, we reported that the Immigration and Naturalization Service (INS) was effective at removing *detained* aliens given final removal orders by the Executive Office for Immigration Review (EOIR).<sup>1</sup> We found that the INS removed almost 94 percent of these individuals. However, we also found that the INS was ineffective at apprehending and removing *nondetained* aliens.<sup>2</sup> The INS removed only 11 percent of our sample of nondetained aliens ordered to leave the country. Our March 1996 review contained five recommendations to improve the INS's effectiveness at apprehending and removing nondetained aliens.

We conducted this current review to determine whether the INS had improved its effectiveness at removing nondetained aliens with final orders, and whether the INS actually implemented the actions it had agreed to take in response to the five recommendations in our 1996 report. We found that, since our 1996 report, the INS maintained its effectiveness at removing detained aliens. However, the INS continues to be largely unsuccessful at removing aliens who are not detained, removing only 13 percent of nondetained aliens with final removal orders.

Moreover, we examined three important subgroups of nondetained aliens and found that the INS was also ineffective at removing potential high-risk groups of nondetained aliens. The subgroups we examined were aliens:

- from countries that the U.S. Department of State identified as sponsors of terrorism – only 6 percent removed,
- with criminal records – only 35 percent removed, and
- who were denied asylum – only 3 percent removed.

We also reviewed the INS's implementation of the corrective actions it agreed to take in response to our 1996 report, and we found that it failed to take or complete corrective actions in a timely manner. In several

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<sup>1</sup> U.S. Department of Justice (DOJ), Office of the Inspector General, *Immigration and Naturalization Service's Deportation of Aliens After Final Orders Have Been Issued* (Report No. I-96-03), March 1996.

<sup>2</sup> Nondetained includes aliens who were never detained or who were detained but subsequently released.

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instances, the INS acted to implement our recommendations only after the September 11, 2001, terrorist attacks, although it had agreed to act much sooner.

## Results in Brief

**The INS remains effective at removing detained aliens.** Both our 1996 report and a 1998 U.S. General Accounting Office (GAO) report examined the INS's removal of detained aliens with final orders, and these reports found that the INS removed 94 and 92 percent of detained aliens, respectively.<sup>3</sup> Given the strong results reported in both reviews, we selected a nominal sample of 50 cases of detained aliens ordered removed from October 1, 2000 through December 31, 2001, and found that the INS removed 92 percent (46 of 50). We also noted that the INS has increased the number of aliens that it detains. We concluded that the INS continues to effectively remove detained aliens.

**The INS remains ineffective at removing nondetained aliens.** To evaluate the INS's effectiveness at removing nondetained aliens with final orders, we analyzed a statistically valid random sample of 308 nondetained aliens who received final removal orders from October 1, 2000 through December 31, 2001. All of the aliens in our sample had exhausted or waived all appeals, and could therefore have been removed by the INS. We found that the INS removed only 13 percent (40 of 308) of the nondetained aliens, which represents a marginal increase from the 11 percent removal rate we reported in 1996.

We also examined three important subgroups of nondetained aliens. The subgroups were aliens from countries identified by the U.S. Department of State as sponsors of terrorism, criminal aliens, and aliens who were denied asylum.

- We found that the INS is even less successful at removing nondetained aliens from countries identified by the U.S. Department of State as state sponsors of terrorism. In 2001, seven countries received this designation: Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria. During the period we reviewed, 2,334 aliens from these countries were ordered removed. Of those aliens, 894 were nondetained. We examined a sample of 470 of

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<sup>3</sup> U.S. General Accounting Office (GAO), *Criminal Aliens – INS's Efforts to Remove Imprisoned Aliens Continue to Need Improvement* (Report No. GGD – 99 – 03), October 16, 1998, p. 11. In our 1996 evaluation, we found that the INS did not remove 100 percent of the detained aliens because of its inability to obtain travel documents, humanitarian and political limitations on removal, and outstanding criminal charges.

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the nondetained cases and found that the INS removed only 6 percent.

- We found that although the INS established the removal of criminal aliens as its first priority, it removed only 35 percent of the nondetained criminals in our sample. The INS removed 7 of the 20 criminals in our sample of 308 nondetained aliens.
- We found that the INS removed only 3 percent of the nondetained asylum seekers with final removal orders. The low removal rate for asylum seekers is a concern because this group may include potential terrorists who threaten our national security. We found that several individuals convicted of terrorist acts in the United States requested asylum as a part of their efforts to stay in the country. In our sample of 308 cases, 86 of the aliens applied for asylum but were denied. When we examined that subgroup, we found that the INS removed only 3 of the 86 (3 percent). That is a much lower removal rate than for nondetained aliens who did not seek asylum. The INS removed 37 of 222 (17 percent) of the nondetained aliens who did not seek asylum.

The INS acknowledged to us that it places a low priority on removing nondetained denied asylum seekers with final orders. We are concerned that the INS does not actively pursue denied asylum seekers. Because that group may include potential terrorists, it would be imprudent to give them so little attention.

**The INS failed to implement corrective actions.** An important reason why the INS failed to improve its removal of nondetained aliens was that the INS did not implement the actions it agreed to take in response to our 1996 report in a complete or timely manner (see Appendix B). In response to our report, the INS identified specific actions it would implement and provided evidence to support the planned actions. We accepted the INS's proposed corrective actions as responsive to our recommendations. However, our current review found that the INS did not follow through on the corrective actions. For example:

- The INS agreed to improve its methods of notifying aliens of their duty to surrender for removal. Although the INS published a proposed rule, it did not consider the rulemaking a priority and allowed it to lapse.<sup>4</sup> After the attacks of September 11, 2001, the INS revived and expanded the rulemaking, now titled *Requiring Aliens Ordered Removed from the United States to Surrender to the*

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<sup>4</sup> Federal Register, September 4, 1998, Volume 63, p. 47205.

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*Immigration and Naturalization Service for Removal.*<sup>5</sup> As of January 2003, the rule still was not final.

- The INS agreed to conduct field tests to target for removal all aliens with final orders and informed us that a limited duration pilot project conducted at the Philadelphia field office had positive results. Based on those results, the INS told us that it was considering conducting tests at two additional field sites. However, the INS was neither able to provide any information regarding these pilot projects at any of the three locations, nor able to locate anyone who could remember the projects.
- The INS contracted with the Vera Institute of Justice to conduct a demonstration project to examine whether a supervised release program could improve court appearance rates for asylum seekers, criminal aliens, and undocumented workers.<sup>6</sup> The final project report was issued on August 1, 2000, but as of December 2002, the INS had not acted on it or implemented any alternative actions to improve the removal rates for nondetained aliens.
- The INS agreed to use an FY 1996 budget enhancement of \$11.2 million to fund 142 positions to remove alien absconders.<sup>7</sup> It also agreed to use the INS's Law Enforcement Support Center to enter alien absconder information into the National Crime Information Center (NCIC) and develop an automated list of criminal absconders for the law enforcement community. However, the INS did not establish absconder removal teams or develop an automated list of absconders until after September 11, 2001. Moreover, the INS was unable to document how it used the \$11.2 million.

**The INS still faces the same problems we reported in 1996.**

Several problems cited in our previous review still exist. Specifically, the INS continues to: dedicate insufficient resources to removing nondetained aliens, work with incomplete and inaccurate data in its electronic database, and face external barriers to removing illegal aliens. We saw one example of the effect of insufficient resources in the Absconder Apprehension Initiative directed by the Deputy Attorney General in January 2002. As of June 2002, the INS had not received the funding requested to permanently

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<sup>5</sup> Federal Register, May 9, 2002, Volume 67, p. 31157.

<sup>6</sup> The Vera Institute of Justice is a private nonprofit organization that conducts original research and provides technical support for the design and implementation of programs to improve the provision of justice and the quality of urban life.

<sup>7</sup> The INS defines absconders as aliens with unexecuted final orders of removal and whose whereabouts are unknown. Most absconders are nondetained aliens.

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assign staff to this important project. Because of the lack of dedicated resources, the INS estimated it would take until 2005 or 2006 to enter into the NCIC the case files of aliens with unexecuted final orders issued before January 2002.

We also noted that the INS dedicated most of its effort toward removing criminal aliens. Although we do not question the need to remove criminal aliens, the result of INS's current approach is that little effort is directed at the large number of non-criminal absconders who may also pose a threat to the United States. The lack of resources allocated to pursuing nondetained aliens is reflected in the low removal rate that we found in this review.

Our 1996 report also cited the lack of accurate address information for aliens as an obstacle to their removal. Our interviews and recent reports prepared by GAO and the INS Office of Internal Audit confirm that the INS continues to face significant data accuracy problems. During this review, we compared data from the INS's and EOIR's alien case tracking and management systems and found name, nationality, and case file number discrepancies, as well as cases missing from the electronic files. The discrepancies occurred in 7 percent of the 308 case files of aliens with final orders, and 11 percent of the sample of 470 aliens from state sponsors of terrorism. According to the INS, data discrepancies are caused by data entry errors, incompatibilities between the systems, and the lack of a system for correcting data inconsistencies.

In addition, the INS is improperly using its policy-closure provisions to close cases of aliens who fail to appear for their removal hearing. We found that the INS is still using the 1982 policy memorandum cited in our 1996 report to identify cases for policy-closure. However, we found that the INS is not adhering to the direction for policy-closure identified in the 1982 policy memorandum. Once a case is policy-closed, the INS district office no longer tracks the case or actively pursues the alien.

There are also significant external barriers beyond the INS's control that can prevent the INS from carrying out removal orders. Executing removal orders depends on the receiving countries accepting the return of their citizens and issuing travel documents to accomplish the transfer. These countries may not promptly process documents related to the removal, may impose travel restrictions, or may refuse to accept the aliens.

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## Conclusion and Recommendations

As the INS prepares to move into the Department of Homeland Security, it faces a significant challenge in determining how to address long-standing deficiencies in its ability to apprehend and remove nondetained aliens ordered removed from the United States. In 1996, we reported that the INS was ineffective at removing nondetained aliens with final orders from the United States, removing only 11 percent of the aliens. This review documented that the INS remains fundamentally ineffectual at meeting this challenge.

Our review found that the INS has not improved its performance and still removes only 13 percent of nondetained aliens with final orders. More importantly, we found that the INS was even less effective at removing some high-risk subgroups. The INS executed removal orders on only 6 percent of the nondetained aliens from countries that the U.S. Department of State has identified as sponsors of terrorism, and only 3 percent of denied asylum seekers. Although the INS has established the removal of criminal aliens as its highest priority, we found that the INS removed only 35 percent of nondetained criminals.

We are making eight recommendations for the INS to better focus its resources on prioritizing, apprehending, and removing nondetained aliens with final removal orders. We recommend that the INS:

1. Establish annual goals for apprehending and removing absconders and other nondetained aliens with final orders to achieve its strategic performance goal of removing 100 percent of aliens with final orders by 2012.<sup>8</sup>
2. Identify the resources needed to achieve the above annual and strategic performance goals, and ensure that resources are applied to all case types.
3. Ensure that resources provided for apprehending and removing alien absconders are tracked so that they are used only as intended.
4. Complete the current rulemaking entitled *Requiring Aliens Ordered Removed from the United States to Surrender to the Immigration and Naturalization Service for Removal*.

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<sup>8</sup> U.S. Department of Justice, *FY 2001 Performance Plan/FY 2002 Revised Final Performance Report/FY 2003 Performance Plan*, Section 5.

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5. Update the policy, establish stronger controls, and provide guidance to ensure that policy-closure provisions are used only when appropriate.
  6. Establish a program to correct the problems with missing and inaccurate data in the Deportable Aliens Control System and work with the EOIR to reconcile discrepancies between the INS and the EOIR data systems.
  7. Implement a shared data system, similar to the Interagency Border Inspections System,<sup>9</sup> for case tracking with the EOIR to identify and process aliens with final orders.
  8. Improve the utility of the INS's website for informing the public about high-risk absconders and facilitate the reporting of leads on absconders.

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<sup>9</sup> The Interagency Border Inspections System is an interagency effort by the INS, U.S. Customs Service, Department of State, and Department of Agriculture to improve border enforcement and controls and to facilitate the inspections of applicants for admission to the United States.

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## PURPOSE, SCOPE, AND METHODOLOGY

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We conducted the current review to determine whether the Immigration and Naturalization Service (INS) had improved its effectiveness at removing nondetained aliens with final orders, and whether the INS took the actions it agreed to in response to the five recommendations we made in our 1996 report.

The scope of this review included all aliens who received final orders of removal from the Executive Office for Immigration Review (EOIR) during a 15-month period from October 1, 2000 through December 31, 2001. The EOIR's Office of Information Resource Management provided us with a database of all aliens issued final removal orders. In each case, the aliens either had exhausted their appeals with the EOIR or did not appeal the initial court decision. Each case included 86 data elements pertinent to our report, including the alien's name, file number (A-file number), nationality, date of entrance, custody status, criminal and asylum statuses, court appearance details, and final removal decision.

The original EOIR database had 145,361 cases drawn from the Automated Nationwide System for Immigration Review (ANSIR).<sup>10</sup> Although we did not independently assess the reliability of the ANSIR data in this review, we did omit 2,678 duplicate or multiple cases.<sup>11</sup> In addition, we omitted 1,768 cases that were under appeal with the Office of Immigration Litigation because the INS cannot execute a final order of removal while it is under appeal. To maintain comparability with our 1996 sample, we did not remove cases where Deferred Enforced Departure or Temporary Protected Status might have prevented the INS from carrying out the removal orders.<sup>12</sup> Our final database totaled 140,915 cases.

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<sup>10</sup> ANSIR is the Information Resource Management System that provides the EOIR with case tracking and management information.

<sup>11</sup> The INS creates a unique A-file number for each alien. However, duplicate cases in ANSIR allowed different aliens to share the same A-file number. Multiple cases in ANSIR had several different entry lines for the same alien with the same A-file number due to numerous court hearings and appeals, which could not fit into one data field.

<sup>12</sup> Temporary Protected Status for Nationals of Designated States (P.L. 101-649) authorizes the U.S. Attorney General to temporarily exempt from removal aliens who are in a protected status because of instability in their country. In 2002, the TPS countries included: Sierra Leone, Burundi, Sudan, Montserrat, Kosovo, Nicaragua, El Salvador, Honduras, and Angola. Deferred Enforced Departure (Executive Order 12711) was issued in 1990, by President George H.W. Bush to temporarily protect aliens from the People's Republic of China from removal. Presidents William J. Clinton and George W. Bush, through Presidential Memoranda, granted this relief from removal to Haitians and Liberians in 1997 and 2001, respectively.

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In order to determine if statistical variations based on custody status existed, we divided our final database into three categories: detained, nondetained, and released. We found no significant differences in the data trends for the nondetained and released categories; thus, we consolidated our findings for these two groups into the overall category of nondetained.<sup>13</sup> Since the ANSIR does not include information on the execution of final orders, we relied on the INS's Deportable Alien Control System (DACS) to determine the removal status of cases for our samples.

Although we did not independently assess the reliability of the data in the DACS, the U.S. General Accounting Office (GAO) and the INS have found significant problems with the DACS's data reliability. In 1995, the GAO evaluated the completeness and accuracy of criminal alien information in the DACS by comparing electronic files and paper files.<sup>14</sup> The GAO found that over 80 percent of the electronic files did not contain all known aliases, 22 percent had name and nationality errors; e.g., misspelled, incorrect order, or incorrect nationalities, and 6 percent did not have a matching paper file. While examining a judgmental sample of paper files, the GAO found that 19 percent did not have a corresponding electronic file in the DACS.

In 2001, the INS Office of Internal Audit (OIA) issued a report entitled *Special Data Integrity Review-Alien Removals*, which focused on final orders of removal for both criminal and non-criminal aliens in order to assess the adequacy of the process used to collect and report alien removal statistics. The review identified and examined management controls in the data collection process that help ensure full reporting, accurate recording, and timely data entry. The OIA concluded that (1) there was no assurance that all aliens in the removal process are entered in the DACS, (2) final alien removal actions were not always recorded in the DACS, (3) there were inadequate controls related to the accuracy of the DACS data, (4) there were insufficient controls to ensure timely data entry, and (5) there was insufficient training for the DACS users. The report concluded by stating, "The lack of written standards to ensure the quality of data entered into the

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<sup>13</sup> The EOIR defines "detained" as an alien within INS, federal, state, or local custody, and "nondetained" as an alien never taken into INS custody or taken into custody and subsequently released. The INS does not categorize aliens as detained, nondetained, or released, but identifies them as criminals, non-criminals, expedited removals, and interior voluntary returns.

<sup>14</sup> U.S. General Accounting Office (GAO), *Law Enforcement Support Center: Name-based Systems Limit Ability to Identify Arrested Aliens* (Report No. GAO/AIMD-95-147), August 1995, p. 8.

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DACS and a process that does not lend itself to verification of data places into question the accuracy and completeness of the data.”<sup>15</sup>

We considered that the delays experienced by the INS in entering case data into the DACS could affect our analysis if the outcomes of the cases not yet entered were materially different from the outcomes of the cases that were entered. However, the evaluations we reviewed did not indicate that the backlogged cases were materially different from those that had already been entered. Despite the problems with the DACS’s data reliability found by the GAO and OIA, it is the sole source of case status information for the INS’s statistical reports on removals. As long as the DACS’s possible data unreliability was disclosed, we concluded that the DACS’s data could be used for the purpose of determining the removal status for our samples.

### *Sampling*

We selected three separate samples from the different categories of aliens for our analyses. From the detained category, we selected a nominal sample of 50 cases to test the removal rates reported in 1996 and 1998. After finding a removal rate of about 92 percent, we decided that conducting a full statistical sample was not necessary. From the nondetained and released categories, we selected a random and statistically valid sample of 308 cases, which allowed us to generalize our findings to the entire population of nondetained aliens with final removal orders. To maintain comparability with sampling done in 1996, we did not remove Temporary Protected Status (TPS) or Deferred Enforced Departure (DED) cases from the sample. Nonetheless, we examined the impact of removing these cases and found it would have had no effect on the removal rate.

We also examined the removal rate for nondetained and released aliens from countries that the U.S. Department of State has identified as sponsors of terrorism. We reviewed these cases because they are a high priority for the Department of Justice.<sup>16</sup> From this category, we selected a judgmental sample of 470 nondetained cases. In our selection of nondetained cases, we evaluated data for all of the aliens from Syria, Sudan, Libya, and Iraq; 45 percent of the aliens from Iran; 38 percent of the aliens from Cuba; and 54 percent of the aliens from North Korea.

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<sup>15</sup> DOJ, Immigration and Naturalization Service, Office of Internal Audit, *Special Data Integrity Review: Alien Removals* (Report No. 01-04), September 17, 2001, p. 7.

<sup>16</sup> Department of Justice, FY 2001 – 2006 Strategic Plan, Chapter 2, Goal 1, p. 10.

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## *Interviews*

During our evaluation, we conducted in-person and telephone interviews with personnel from the INS's Detention and Removal Office, the Law Enforcement Support Center (LESC), Office of Investigations, Office of General Counsel, Absconder Apprehension Initiative Office, Post-Order Custody Review Unit, and Executive Office of Policy and Planning; officials from the EOIR; staff from the Office of Immigration Litigation in the Department of Justice Civil Division; and staff from the Executive Office for United States Attorneys. We also used data from the FY 2000 and FY 2001 *Statistical Yearbook of Immigration and Naturalization Service*, INS budget requests for FY 2000 through FY 2003, internal INS memoranda, a report from the Vera Institute for Justice, GAO reports, the EOIR *Statistical Yearbook* for FY 2000 and FY 2001, and transcripts of Congressional testimony by INS officials. Finally, we reviewed the laws and regulations applicable to the INS's apprehension, detention, and removal of aliens with final removal orders.

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## **BACKGROUND**

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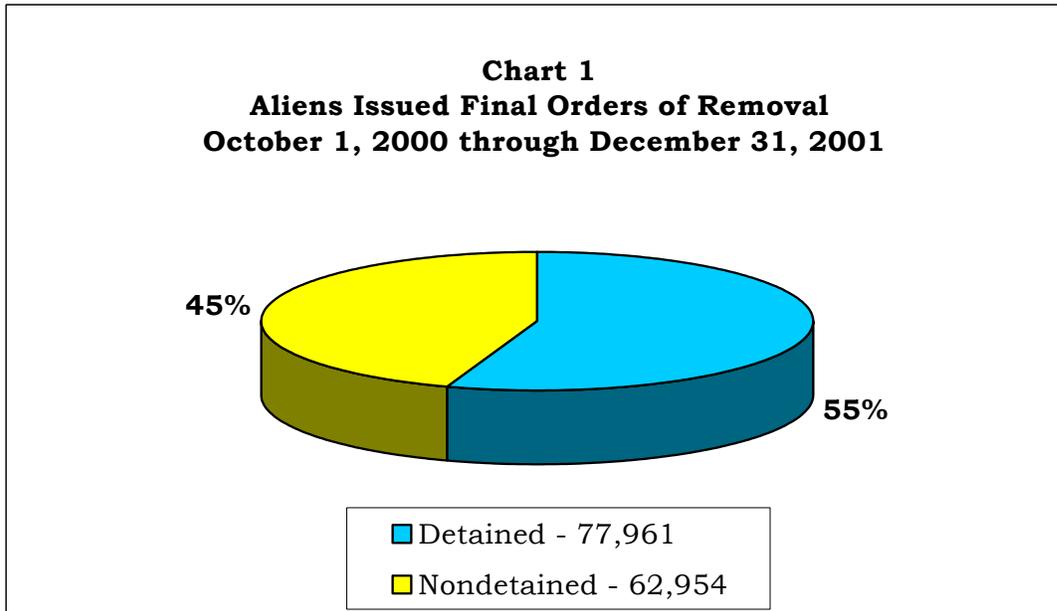
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Each year, millions of aliens attempt to enter the United States without proper documentation, or enter legally but overstay or violate their visas. Many of these aliens subsequently leave – from FY 1996 through FY 2000, more than 7.8 million aliens departed voluntarily. However, many illegal aliens remain in the country who could be removed under United States immigration laws. According to the United States Census Bureau's 2000 data, there were more than 8 million illegal aliens living in the United States.

The INS serves a dual role in which it both enforces United States immigration laws and provides immigration benefits and services. Two major INS programs carry out the enforcement role. The border enforcement program is responsible for preventing unauthorized aliens from entering the country, while the interior enforcement program apprehends, processes, and removes illegal aliens from the United States.

The task of identifying and removing illegal aliens from the United States can involve other agencies. Aliens may be apprehended by officers in the INS's Investigations, Inspections, or Border Patrol offices; by staff of the Detention and Removal (D&R) office; or, they may be detained by state or local law enforcement officers. Other federal agencies that are frequently involved in identifying, apprehending, or detaining aliens include the Federal Bureau of Investigation (FBI), the United States Marshals Service (USMS), the Federal Bureau of Prisons (BOP), and the Department of Labor. Once illegal aliens are apprehended, it is the D&R's responsibility to process them through the system that determines whether they can stay or whether they will be removed. Appendix A contains a detailed illustration and discussion of this process. Over half (55 percent) of the 140,915 aliens who were issued final orders by the EOIR from October 1, 2000 through December 31, 2001 were detained (see Chart 1).

The INS works with the EOIR to conduct the hearing process for determining whether aliens should be removed. The INS charges aliens with removal from the United States and begins proceedings by filing a charging document with the EOIR. The EOIR, a component of the Department of Justice that is separate and apart from the INS, is comprised of the Office of the Chief Immigration Judge, the Board of Immigration Appeals (BIA), and the Office of the Chief Administrative Hearing Officer. The EOIR is responsible for adjudicating immigration cases at both the trial level, before Immigration Judges and the appellate level, before the BIA. The United States federal courts have jurisdiction over certain decisions appealed from the BIA.



Source: OIG analysis of EOIR data.

### Historical Trend of INS Removals

Over the last 5 years, the INS formally removed an average of 97,338 aliens per year (Table 1).

<b>Table 1</b> <b>INS Removals</b> <b>FY 1997 Through FY 2001</b>	
<u>Fiscal Year</u>	<u>Removed</u> <sup>a</sup>
1997	91,190
1998	97,068
1999	91,485
2000	99,691
<u>2001</u>	<u>107,254</u>
Total	486,688

Source: 2001 Statistical Yearbook of INS, p. 235.

<sup>a</sup> Includes removals executed through orders of deportation, exclusion, and removal. Excludes expedited removals as well as confirmed voluntary departures.

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However, many aliens ordered to leave do not comply with their removal orders. As of June 2002, the INS estimated that there were about 355,000 aliens with unexecuted removal orders.<sup>17</sup>

### **1996 OIG Evaluation Reported the INS Was Ineffective at Removing Nondetained Aliens**

In March 1996, the OIG reported a large disparity between the removal rates of detained aliens compared to nondetained aliens with final removal orders. Through a review of 1,058 sample case files, we found that 94 percent of detained aliens, but only 11 percent of nondetained aliens, had left or been removed from the United States.

Due to the disparity between the number of detained and nondetained aliens removed, we made five recommendations to the INS to improve its processing of nondetained aliens, including:

1. Move more quickly to present surrender notices to aliens after receiving final orders.
2. Deliver surrender notices instead of mailing them to aliens.
3. Take aliens into custody at the hearings when final orders are issued.
4. Pursue aliens who fail to appear and review procedures for closing cases for aliens who fail to appear.
5. Coordinate with other governmental agencies to make use of all available databases to track aliens who fail to appear.

The INS concurred with recommendations 1 and 5, and partially concurred with recommendations 2, 3, and 4. The INS proposed alternative actions to meet the intent of recommendations 2, 3, and 4, which we accepted. Between March 1997 and October 2000, the INS reported to the OIG that it had taken the actions it proposed for four of the recommendations. Consequently, we closed recommendations 1, 3, 4, and 5. As of January 2003, the INS had not provided final information on action related to recommendation 2, and that recommendation remains open. For this review, we assessed the INS's implementation of each of the corrective actions (see Appendix B for the detailed results of our assessment).

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<sup>17</sup> The INS Office of Policy and Planning, November 15, 2002.

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## Changes in Immigration Law and Enforcement Since 1996

Since our 1996 review, a number of important events have affected how the INS apprehends and removes illegal aliens. These include a major revision of U.S. immigration laws by Congress in September 1996, a new INS interior enforcement strategy, a Supreme Court ruling that affects the INS's ability to detain aliens pending their removal, and several INS removal initiatives. Most recently, on November 25, 2002, the President signed into law the Homeland Security Act, which directs that the INS and its functions be moved from the Department of Justice into a new Department of Homeland Security (DHS) in March 2003. Each of these events is discussed briefly below:

- The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). The IIRIRA amended and reformed the Immigration and Naturalization Act of 1952 (P. L. 82-414) and other existing immigration laws, including making a significant change to deportation and exclusion procedures. Prior to 1996, aliens arriving at ports of entry with improper or fraudulent documents were often allowed to enter the United States while awaiting court proceedings to determine their admissibility. Those aliens not held in custody frequently absconded and remained in the United States. IIRIRA allowed the INS to refuse entry to aliens without processing them through the immigration courts under a new authority termed "expedited removal." There were 69,730 expedited removals in FY 2001. IIRIRA also increased detention requirements for certain categories of aliens, such as those that engaged in terrorist, criminal, drug trafficking, or immoral activities.
- Interior Enforcement Strategy. In 1999, the INS adopted a new Interior Enforcement Strategy, which established new priorities for the interior enforcement program to identify and remove criminal aliens; attack alien smuggling operations; respond to community complaints about illegal immigration; reduce benefit and document fraud; and make it more difficult for employers to hire illegal aliens. These priorities were based on the potential harm to the nation from the target group or activity; the cost; and the potential for the strategy to be effective, such as reducing the size of the problem, providing a deterrence, or benefiting communities.
- Zadvydas v. Davis, 121 U.S. 2491 (2001). In June 2001, the U.S. Supreme Court ruled that the INS may detain aliens under final removal orders only for a period reasonably necessary to

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carry out their removal. The Court found that detention for up to six months after issuance of the final order was presumptively reasonable. After six months, aliens can request to be released by demonstrating that it is unlikely that they will be removed in the foreseeable future. Unless the INS can refute the alien's claim by demonstrating that removal is pending, show that the alien contributed to the delays, or identify other reasons that bar release (such as suspected terrorist activities or danger to the community), the alien must be released.

Before releasing these aliens, the INS reviews the cases to identify those in which travel documents may be available, removal practicable and in the public interest, and those in which aliens may be violent, pose a risk to the community, or pose a risk for violating their release conditions or fleeing. From January 2001 through September 2002, the INS reviewed 1,710 cases and released 1,034 (60 percent) of the aliens.

- Fugitive Operations Teams. On October 26, 2001, the President signed the USA PATRIOT Act.<sup>18</sup> Among its provisions, the USA PATRIOT Act authorized funding and positions to law enforcement agencies involved in combating terrorism. The INS subsequently received \$5.3 million to apprehend, process, and remove fugitive aliens with final removal orders. In March 2002, the INS distributed the resources and instructed the Districts to proceed expeditiously in hiring and activating their teams.<sup>19</sup> According to the INS, the teams will apprehend fugitive aliens from countries to which they can be removed quickly. As of January 2003, the INS had announced the positions and was in the process of hiring staff for the teams.
- Absconder Apprehension Initiative (AAI). On January 25, 2002, the Deputy Attorney General directed the INS, FBI, USMS, and the United States Attorneys' Offices to implement the AAI to target for removal the more than 300,000 absconders in the United States. The FBI and USMS were directed to assist the INS with apprehensions while the United States Attorneys, at the INS's request, would prosecute absconder cases. Under the AAI, backlogged cases are reviewed and those containing sufficient biographical information are entered into the National Crime

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<sup>18</sup> P.L. 107-56, Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorists (USA PATRIOT Act).

<sup>19</sup> Memorandum from Anthony Tangeman, Deputy Associate Commissioner, INS Office of Detention and Removal, to Regional Directors, March 8, 2002.

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Information Center (NCIC).<sup>20</sup> As of December 2002, the INS reported that the AAI program had resulted in 2,070 apprehensions and 522 removals. The AAI initially focused on absconders from countries with an active al Qaeda presence, followed by absconders with criminal records, and finally on non-criminal cases and cases of unverified voluntary departure.

- Department of Homeland Security (DHS). On November 25, 2002, President Bush signed into law the Homeland Security Act of 2002. This law restructures the Executive branch of the Federal government by combining the functions of several agencies to better meet the threat posed by terrorism. The INS is among the agencies that will be transferred into the DHS on March 1, 2003. Once the INS is transferred, the immigration benefits and immigration law enforcement functions will be separated into the Bureau of Citizenship and Immigration Services, and the Bureau of Border Security.

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<sup>20</sup> The NCIC is a computerized index of criminal justice information (including, criminal record history information, fugitives, stolen properties, and missing persons) maintained by the FBI, which is available to Federal, state, and local law enforcement and other criminal justice agencies 24 hours a day, 365 days a year.

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## RESULTS OF THE INSPECTION

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### THE INS'S EFFECTIVENESS AT REMOVING ALIENS WITH FINAL ORDERS

**Although the INS remains effective at removing detained aliens, it continues to be largely unsuccessful at removing nondetained aliens, removing only 13 percent of those we sampled. Moreover, the INS was deficient at removing important subgroups, removing only 6 percent of the nondetained aliens from countries that sponsor terrorism, 35 percent of nondetained criminal aliens, and only 3 percent of nondetained aliens denied asylum.**

#### The INS Remains Effective at Removing Detained Aliens

Our 1996 report and a 1998 GAO report examined the INS's removal of detained aliens with final orders. The reviews found that the INS removed 94 and 92 percent of detained aliens, respectively. As these results demonstrate, detention enables the INS to remove most detained aliens with final orders.

In this review, we found that the INS increased the number of aliens that it detained during the last seven years. The INS reported that the average daily detention population increased substantially from 5,532 in FY 1994 to 19,533 in FY 2001. The INS's numbers of formal removals for all aliens increased as well, from 45,165 in 1994 to 107,254 (66,827 of whom were detained) in 2001.

In order to determine if the high rate of removing detained aliens reported in past reviews remained valid, we selected a nominal sample of 50 cases of detained aliens issued final orders in the period we reviewed. The results of our sample mirror the results of previous OIG and GAO reviews. We found that the INS removed 92 percent (46 of 50) of the detained aliens from the United States. Of the four aliens that were not removed, two are serving 10-year prison terms. Information on the other two aliens was not available in their DACS files. Based on the consistency of our sample results with prior reports, we concluded that the INS remains effective at removing detained aliens, and further sampling or review of detainee removals was not warranted.

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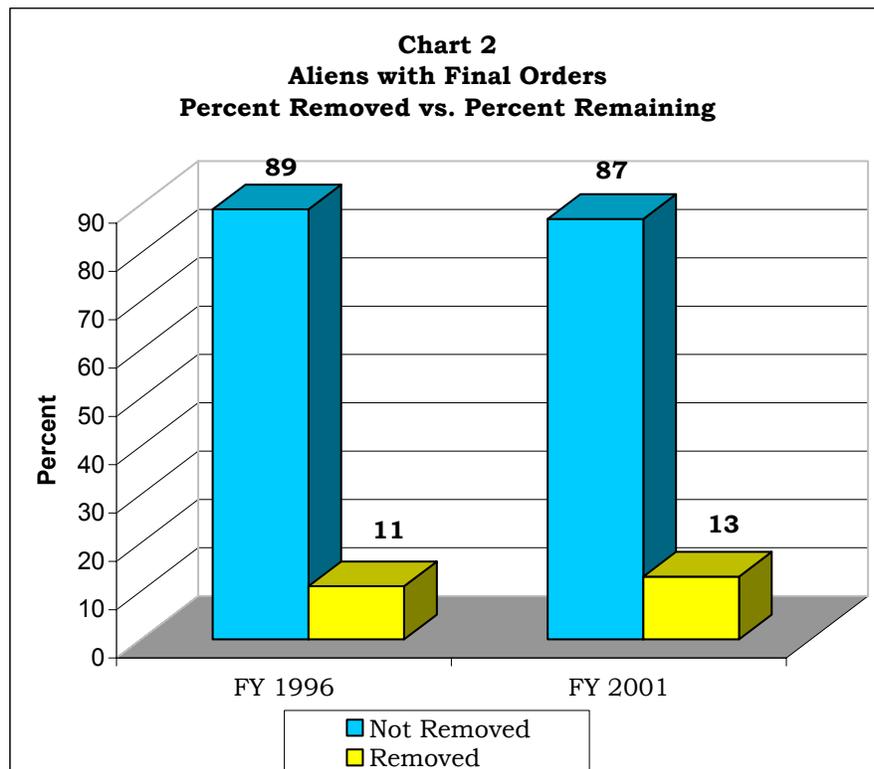
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## The INS Remains Ineffective at Removing Nondetained Aliens

In dramatic contrast to the detained removal rate, the INS removed only 13 percent of nondetained aliens with final removal orders. We found it alarming that the INS was even less effective at removing nondetained aliens from countries that sponsor terrorism, removing only 6 percent of those given final removal orders. For nondetained criminal aliens, the INS removed 35 percent of the cases in our sample. While that is a higher percentage than other nondetained categories, it is significantly lower than the rate at which the INS removes detained aliens. For denied asylum seekers, the INS removed only 3 percent of those given final removal orders.

### The INS Removed Only 13 Percent of Nondetained Aliens with Final Orders

Of the 308 cases of nondetained aliens in our sample, the INS removed only 40 (13 percent).<sup>21</sup> While this is a marginal increase over the 11 percent removal rate for nondetained aliens found in our 1996 review, the INS's effectiveness at removing nondetained aliens remains extremely low (Chart 2).



Source: OIG Analysis of EOIR and DACS data.

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<sup>21</sup> Removals include both aliens removed directly by the INS and verified voluntary departures.

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When aliens fail to appear for their removal proceedings, the Immigration Judge can order them removed *in absentia* or administratively close their case.<sup>22</sup> We examined the *in absentia* rate within our sample of 308 nondetained cases and found that 204 (66 percent) of the aliens failed to appear for their removal proceedings and were ordered removed *in absentia*. We examined the correlation between removals and court attendance and found that the aliens' failure to appear before the Immigration Judge at removal proceedings is a significant and strong negative indicator for the likelihood of removal by the INS. Of the 204 aliens ordered removed *in absentia*, only 14 had been removed, a removal rate of 7 percent. In contrast, 26 of the 103 aliens who attended the hearing where they received their removal order had been removed, a rate of 25 percent.

#### The INS Removed Only 6 percent of Nondetained Aliens from Countries that Sponsor Terrorism

Since 1995, the U.S. Department of State has identified countries that are state sponsors of terrorism. As of 2001, the seven countries designated as sponsors of terrorism were: Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria. During the period we reviewed, the EOIR issued final removal orders to 2,334 aliens from these countries, or about 2 percent of the total number of aliens issued final orders in our sample period (Table 2).

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<sup>22</sup> The *in absentia* designation means the aliens received proper notification of the time and date of their removal proceedings but did not attend. Administrative closures occur when an alien fails to appear for the removal proceeding and the Immigration Judge is not satisfied that the INS notified the alien of the date and time of the proceeding. Thus, the judge does not order the alien removed *in absentia* but administratively closes the alien's case.

<b>Table 2</b>				
<b>Aliens From Countries That Sponsor Terrorism</b>				
<b>Who Were Ordered Removed</b>				
<b>October 1, 2000 through December 31, 2001</b>				
<b>Country</b>	<b>Total</b>	<b>Percentage</b>	<b>Detained</b>	<b>Nondetained</b>
1. Cuba	1,733	74.3%	1,293	440
2. Iran	318	13.6%	67	251
3. Iraq	78	3.3%	32	46
4. Libya	4	0.2%	2	2
5. North Korea	27	1.2%	1	26
6. Sudan	84	3.6%	17	67
7. Syria	90	3.9%	28	62
<b>TOTAL:</b>	2,334	100%*	1,440	894

Source: OIG analysis of EOIR data

\* Does not add to 100 percent due to rounding.

We reviewed the rate at which the INS removed aliens from these countries to determine whether the INS had effectively addressed these high-risk cases. In our judgmental sample of 470 nondetained aliens with final removal orders, we found that only 30 of the 470 nondetained aliens from countries identified as sponsors of terrorism had been removed – a rate of only 6 percent (Table 3).

<b>Table 3</b>			
<b>Removal of Nondetained Aliens From Countries</b>			
<b>That Sponsor Terrorism</b>			
<b>October 1, 2000 through December 31, 2001</b>			
<b>Country</b>	<b>Number Reviewed</b>	<b>Removed</b>	<b>Percentage</b>
1. Cuba	165	1	1%
2. Iran	114	11	10%
3. Iraq	46	4	9%
4. Libya	2	0	0%
5. North Korea	14	3	21%
6. Sudan	67	1	1%
7. Syria	62	10	16%
<b>TOTAL:</b>	470	30 (6%)	

Source: OIG analysis of EOIR and DACS data.

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Two important factors affected the removal rate in our sample of nondetained aliens from countries that sponsor terrorism. First, over 35 percent came from Cuba, which has no formal diplomatic relations with the United States. It is difficult for the INS to obtain travel documents for aliens from nations that have poor or no diplomatic relations with the United States. Second, 14 percent came from the Sudan. Some Sudanese aliens may be eligible for Temporary Protected Status (TPS). Aliens eligible for TPS are exempt from removal while in a protected status (Appendix A). However, we found that only 5 of the 67 (7 percent) Sudanese aliens in our sample either applied or were granted TPS.

Although some Sudanese nationals may be eligible for TPS, the Sudan remains a high-risk country. Al Qaeda located its headquarters in the Sudan from 1991 until 1996, and the FBI reported that al Qaeda provided military and intelligence training in the Sudan.<sup>23</sup> Sudanese nationals have been involved in terrorist activity in the United States. In 1995, five Sudanese nationals were convicted of seditious conspiracy, bombing conspiracy, and attempted bombing.<sup>24</sup> Finally, the Sudan remains on the U.S. Department of State's list of countries known to sponsor terrorism. Consequently, Sudanese aliens with final orders should not be overlooked solely because of their potential eligibility for TPS.

#### The INS Removed Only 35 Percent of Nondetained Criminals

Because the INS established the removal of criminals as its first priority in its Interior Enforcement Strategy, we examined its success at removing nondetained criminal aliens. Within our sample of 308 nondetained aliens with removal orders, we found 20 cases where the alien was charged as a criminal before the EOIR. Of those 20, the INS removed 7 (35 percent). While 35 percent is better than the 13 percent overall removal rate for nondetained aliens, it nonetheless reflects a low removal rate for potentially dangerous aliens. This suggests that the INS is ineffective in removing nondetained aliens even when the aliens are criminals.

#### The INS Removed Only 3 Percent of Nondetained Asylum Seekers

Finally, we reviewed the effectiveness of the INS at removing nondetained aliens who applied for asylum but were denied and ordered removed. We found that this group was removed at the lowest rate of any

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<sup>23</sup> Congressional Statement of J.T. Caruso, Federal Bureau of Investigation, Counter Terrorism Division, before the Subcommittee on International Operations and Terrorism, Committee on Foreign Relations, U.S. Senate, December 18, 2001.

<sup>24</sup> 18 U.S.C. 2384 allows the Government to charge defendants under the seditious conspiracy statute, which criminalizes agreements to wage war against the United States and to oppose government authority by force.

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subgroup we examined. In our sample of 308 cases, we found that only 3 percent (3 of 86) of the nondetained denied asylum seekers with final orders were removed. In comparison, the INS removed 17 percent (37 of 222) of the nondetained aliens who did not apply for asylum. We also found a 3 percent removal rate for nondetained asylum seekers from countries that sponsor terrorism. Of the 470 nondetained aliens from states that sponsor terrorism, 259 had requested asylum and been denied, and the INS removed only 9. The INS confirmed that it places a low priority on executing removal orders on aliens who are denied asylum.

Although we are not suggesting that all asylum applicants are potential terrorists, we found several asylum applicants who had committed or planned terrorist acts in the United States while they were awaiting their asylum determinations (see Table 4, next page).

Because the apprehension and removal of aliens denied asylum and ordered removed is a low priority with the INS, had these individuals completed the asylum application process and been given final removal orders, it is unlikely the INS would have carried them out. Therefore, it is possible for high-risk aliens who would not otherwise be able to enter or reside in the United States to exploit this weakness. The INS should not overlook asylum seekers when pursuing nondetained aliens with final removal orders.

## **Recommendations**

We recommend that the INS:

1. Establish annual goals for apprehending and removing absconders and other nondetained aliens with final orders to achieve its strategic performance goal of removing 100 percent of aliens with final orders by 2012.<sup>25</sup>
2. Identify the resources needed to achieve the above annual and strategic performance goals, and ensure that resources are applied to all case types.

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<sup>25</sup> DOJ, *FY 2001 Performance Plan/FY 2002 Revised Final Performance Report/FY 2003 Performance Plan*, Section 5.

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**Table 4**  
**Terrorists Who Applied for Asylum**

*Ahmad Ajjaj and Ramzi Yousef* – These individuals entered the United States seeking asylum in 1991 and 1992, respectively. In 1993, they helped commit the first World Trade Center bombing which killed six people. Ajjaj left the country and returned in 1992 with a fraudulent passport. He was convicted of passport fraud and did not complete the asylum process prior to his conviction. Yousef completed the required INS paperwork and was given a date and time for his asylum hearing; however, his application was pending when the World Trade Center was bombed.

*Sheik Umar Abd ar-Rahman* – Abd ar-Rahman sought asylum to avoid being deported to Egypt. He helped plan a “day of terror” for June 1993 in which New York City landmarks such as the United Nations’ building, the FBI’s Headquarters in lower Manhattan, and the Lincoln and Holland Tunnels were to be bombed.

*Hesham Mohamed Hadayet* – Hadayet applied for asylum in 1992, telling the INS that Egyptian authorities falsely accused and arrested him for being a member of the Islamic Group Gama’a al-Islamiyya, which is on the U.S. Department of State’s Foreign Terrorist Organizations list. The INS denied his asylum request and Hadayet was placed in removal proceedings. After Hadayet did not receive the notice of his immigration hearing date due to an incorrect mailing address, the EOIR terminated the proceeding. On July 4, 2002, Hadayet shot and killed two people at the Los Angeles airport before he was killed by an El Al Airlines security guard.

*Mir Aimal Kansil* – Kansil entered the United States in 1991 and applied for political asylum in 1992. The INS Asylum office did not interview him or schedule an immigration court date since his application was in the pending backlog. On January 25, 1993, Kansil murdered two and wounded two CIA employees.

*Gazi Ibrahim Abu Mezer* – The INS voluntarily returned Mezer to Canada after he was apprehended twice in June 1996. After Mezer's third apprehension in January 1997, the INS began formal removal proceedings because Canada refused to accept him a third time. In April 1997, Mezer filed for asylum, in which he claimed that he suffered a fear of persecution if he returned to Israel. In June 1997, Mezer withdrew his application and told his attorney that he had returned to Canada. Subsequently, Mezer was convicted and sentenced to life in prison for planning to bomb the New York City subway system.

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## **THE INS'S INCOMPLETE IMPLEMENTATION OF THE 1996 CORRECTIVE ACTIONS**

**The INS delayed or failed to complete the implementation of the corrective actions it agreed to take in response to our 1996 report. Although the INS indicated it would act much sooner to implement the recommendations, in several instances it acted only after the September 11, 2001, terrorist attacks. As a result, the INS failed to improve its removal of nondetained aliens with final orders.**

In 1996, we made five recommendations to improve the INS's effectiveness at apprehending and removing nondetained aliens. The INS agreed with our findings, but proposed to take alternative actions to correct several of the deficiencies we found. The INS subsequently provided evidence to support the completion of its planned actions. See Appendix B for a detailed discussion of our recommendations and the INS's proposed actions. We accepted the INS's proposed corrective actions as responsive to our recommendations. However, our current review found that the INS did not follow through on several of the corrective actions. For example:

- The INS agreed to conduct field tests under which all aliens with final removal orders and all alien absconders would be targeted for removal. The INS informed us that a limited duration pilot project conducted at the Philadelphia field office had positive results, but it planned to conduct field tests at two additional sites before it would decide whether or not to expand the program. During the current review, we contacted INS officials both in the Philadelphia field office and at the INS Headquarters to obtain the results of the pilot projects. The INS was unable to provide any information regarding pilot projects at any of the three locations, and it was unable to locate anyone who could remember the projects.
- The INS proposed to notify aliens of their duty to surrender when they were first apprehended, as well as at subsequent hearings before Immigration Judges or the BIA. Aliens who did not comply with their final removal orders would be barred from appeals or administrative relief. The INS told the OIG that it had published a proposed rule to implement the changes. During this review, we were told by the INS that the rulemaking was not considered a priority and was allowed to lapse.

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- The INS contracted with the Vera Institute of Justice (Vera) in 1996 to conduct a demonstration project, called the Appearance Assistance Program (AAP). The AAP examined whether supervised release would improve the court appearance rates for a sample of nondetained aliens, including asylum seekers, criminals, and undocumented workers. In a 1999 inspection, we found contract award, survey design, and program implementation problems with the AAP, and recommended that the INS carefully review the Vera findings before implementing Vera's recommendations.<sup>26</sup> Vera's final AAP report, issued August 1, 2000, concluded that supervised release was a viable means for increasing court appearances at a lower cost than detention, and recommended that the INS establish a pilot supervised release program. Yet two years later, the INS had not utilized supervised release to improve its removal rate for nondetained aliens.

In FY 2002, the INS was appropriated funding for a supervised release program, and, as of January 2003, was still drafting a Request for Proposals for the program. The proposed target groups for the planned supervised released program were asylum applicants, non-criminals, Legal Permanent Residents, and aliens on an Order of Supervision. However, there are other categories of aliens presenting elevated national security concerns who could be targeted for this program, such as aliens from the countries for which the Attorney General established enhanced registration requirements.<sup>27</sup> Also, the planned target groups include non-criminals, but not criminals, who may pose a higher risk. Expanding or revising the target groups could enhance the potential for this program to contribute to public safety and national security.

- The INS had informed us that it would use an FY 1996 budget enhancement of \$11.2 million to fund 142 positions for locating and removing alien absconders with final orders. The INS also stated it would enter warrants and removal orders for non-criminal absconders into the NCIC. When we attempted to confirm the INS's actions, we found that the INS could not identify how the money was used. The INS also did not enter non-criminal absconders into the NCIC until after September 11, 2001.

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<sup>26</sup> DOJ, Office of the Inspector General, Inspections Memorandum Report, *Contract Number COW-6-C-0038 with the Vera Institute of Justice* (Report No. I-99-04), March 31, 1999.

<sup>27</sup> Federal Register, May 9, 2002, Volume 67, p. 77642. *Registration of Certain Nonimmigrant Aliens from Designated Countries*, implementing Attorney General Order No. 2638-2002.

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Only after September 11, 2001, did the INS implement several actions that it had originally agreed to take in response to our 1996 report. These actions included reissuing its proposed rule on the duty to surrender, establishing fugitive operations teams, and creating a new program to enter all alien absconders into the NCIC. These three actions are described below:

- On May 9, 2002, the INS revived its rulemaking and published a second proposed rule, entitled *Requiring Aliens Ordered Removed from the United States to Surrender to the Immigration and Naturalization Service for Removal*, that would broaden notification methods and require all properly notified aliens to surrender within 30 days.<sup>28</sup> The new rule also would bar properly notified aliens who do not comply from applying for administrative relief from removal or from returning legally to the United States for ten years, and would apply to aliens currently in immigration proceedings. According to the INS's Office of General Counsel, the proposed rule would limit the number of "Motions to Reopen" granted by either the Immigration Courts or the BIA due to the mandated denial of applications for discretionary relief for failure to comply, thereby expediting the removal process once the aliens are apprehended. As of January 2003, the proposed rule was not final.
- The USA PATRIOT Act, signed on October 26, 2001, provided the INS with funding for 40 additional staff to create Fugitive Operations Teams to apprehend, process, and remove aliens with final removal orders. The INS used the positions to create teams in seven districts with large numbers of absconders (Appendix C). According to the INS, the teams will apprehend aliens from countries to which they can be expeditiously removed. The teams will focus on backlogged criminal cases at field offices, followed by cases held at the National Records Center, and finally on non-criminal aliens with final removal orders and cases on orders of supervision. The INS estimates that the 8 teams will apprehend and remove about 1,000 criminal fugitives in FY 2003. As of January 2003, over a year after the USA PATRIOT Act was signed, the INS was still in the process of hiring staff for the teams.
- On January 25, 2002, the Deputy Attorney General directed the INS, FBI, USMS, and the United States Attorneys' Offices to implement the AAI to target for removal the more than 300,000 absconders in the United States. Under the AAI, backlogged cases are reviewed and those with sufficient biographical information are entered into the

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<sup>28</sup> Federal Register, May 9, 2002, Volume 67, p. 31157.

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NCIC at the INS's LESC in Burlington, Vermont. The AAI initially focused on absconders from countries with an active al Qaeda presence, followed by absconders with criminal records, and finally on non-criminal cases and cases of unverified voluntary departure. At the INS's request, the USMS and FBI assist the INS in apprehending aliens identified through this initiative. Additionally, when state and local law enforcement officers encounter aliens, they can contact the LESC. If the alien is an absconder, the LESC faxes a detainer to the law enforcement officer. As of December 2002, the INS reported that the AAI program had resulted in 2,070 apprehensions and 522 removals.

In addition to the INS's failure to implement corrective actions in a timely manner, we also found that the INS's policy on closing cases for aliens who fail to appear remains problematic. In our 1996 evaluation we found that the INS's District Offices did not actively pursue nondetained aliens with final removal orders who failed to appear, and that, pursuant to a 1982 policy memorandum, the INS was closing inactive cases in several categories. We also found that the INS was not tracking these policy-closed cases, thus, it was unlikely that the final order would ever be executed. The INS did not concur with the OIG's recommendation to update the policy because it asserted that, after extended periods of time, cases with no leads were unlikely to result in an apprehension and could be reopened if necessary.

In our current review, we found that the INS is improperly closing case files. The INS policy-closed 21 (7 percent) of the cases in our sample of 308 nondetained aliens, and 24 (5 percent) of the cases in our sample of 470 nondetained aliens from state sponsors of terrorism. None of the 45 cases met the criteria for policy-closure defined in the 1982 memorandum.<sup>29</sup> The INS informed us that it is now drafting a revised policy, but was unable to provide us with a copy of this draft. The INS's failure to define and implement guidelines on policy-closures allows INS districts to improperly close cases of nondetained aliens with final removal orders.

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<sup>29</sup> According to the INS, cases are policy-closed when an alien fails to appear for a hearing or surrender for removal and the INS has not had contact with the alien for a specific period of time. The four categories and time limits after which policy-closure is allowed if no contacts are made include: Category 1 – Voluntary Departures (1 year); Category 5A – Cases Referred to Investigations (1 year); Category 5B – Absconders (Criminal, Immoral, Narcotics, Subversives [CINS]) (5 years); Category 5B – Absconders (Non-CINS) (3 years).

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We found this is particularly a problem in one INS district. For example, we found that the Los Angeles District accounted for 35 (78 percent) of the 45 policy-closures in our combined samples. Twenty-one (60 percent) of the cases that the Los Angeles District closed were cases of aliens from state sponsors of terrorism while almost all of the remaining 14 aliens (40 percent) were from South America. Moreover, in 9 (26 percent) of the Los Angeles cases the aliens appeared for the hearings when their final orders were issued. The aliens' receipt of their hearing notices indicates the INS was aware of the aliens' whereabouts and had contacted them. The INS guidance on policy-closure does not allow cases to be closed for one to five years after the last contact. However, the INS policy-closed these cases rather than apprehending and removing the aliens, or waiting the required period.

The INS's substantial failure to complete the actions it agreed to take in response to our 1996 recommendations, or to otherwise correct the deficiencies we reported, hindered the INS from significantly improving its effectiveness at removing nondetained aliens with final orders.

## **Recommendations**

We recommend that the INS:

3. Ensure that resources provided for apprehending and removing alien absconders are tracked so that they are used only as intended.
4. Complete the current rulemaking entitled *Requiring Aliens Ordered Removed from the United States to Surrender to the Immigration and Naturalization Service for Removal*.
5. Update the policy, establish stronger controls, and provide guidance to ensure that policy-closure provisions are used only when appropriate.

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## RESOURCE, DATA, AND TRAVEL DOCUMENT PROBLEMS CONTINUE TO HAMPER THE INS'S REMOVAL EFFORTS

**The INS continues to allocate insufficient resources to removing nondetained aliens. It also faces data completeness and accuracy problems, as well as problems obtaining travel documents. Currently, most available resources are directed towards removing criminal aliens, and inadequate attention is focused on non-criminal absconders. The problems with data, especially alien addresses, limit the INS's ability to find absconders. In addition, external barriers hamper the INS's ability to secure travel documents, which impedes removal efforts.**

**The INS allocates insufficient resources to non-criminal absconder cases.** Because the INS's resources are limited, it must focus its efforts on the greatest threats to the American public. The INS's priorities for removing illegal aliens are detained criminal aliens, followed by nondetained criminals, and lastly nondetained non-criminals. During interviews, D&R management officials confirmed that D&R officers focus on the highest priority cases within their assigned workload. Although INS District offices vary in their methods for assigning cases to D&R officers, most officers are assigned all types of cases. Because D&R officers' efforts are focused on the highest priority, criminal aliens, officers have limited time to pursue nondetained absconders who are not criminals.

Although we do not question that criminal aliens deserve INS's attention, non-criminal absconders also may pose a security threat. The lack of resources dedicated to pursuing this group is reflected in the low removal rate we found in this review.

**Incomplete and inaccurate data, especially alien addresses, limits INS's ability to pursue absconders.** Effectively processing the millions of legal and illegal immigrants in the United States requires an extensive information system to track and manage each case. We have noted in a number of our reports that the INS has serious and continuing problems with data reliability, which negatively impacts the INS's ability to process aliens.<sup>30</sup>

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<sup>30</sup> In 1997, we reported that Nonimmigrant Information System (NIIS) data was seriously flawed in content and accuracy. In 1998, we found that the Customer Management Information System (CMIS) was not consistently reliable because of faulty data entry, and that the INS had not taken the necessary steps to ensure IDENT data integrity. In 2002, we found that nonimmigrant data in the NIIS continued to be unreliable.

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Our 1996 report cited the lack of accurate address information for aliens as an obstacle to removal. During our current review, we found inconsistencies between EOIR's and INS's case tracking information for the aliens in our sample. We found name discrepancies, cases missing from the DACS, nationality discrepancies, and case file number discrepancies in 7 percent of our sample of 308 case files on aliens with final orders, and 11 percent of our sample of 470 aliens from states that sponsor terrorism.

In 2001, the INS's Office of Internal Audit reported that the INS lacked written standards to ensure the quality of the DACS data.<sup>31</sup> Our interviews also show that the INS continues to face significant data problems. The INS statistician we interviewed estimated that 20 percent of the total cases in the INS and EOIR systems do not contain matching data, and 195,000 files that are in the EOIR's system are not in the INS's system. The INS Office of Internal Audit reported internal controls were not in place to reconcile and correct data errors or ensure the integrity and timeliness of data entry.

A recent GAO report also confirmed that data problems continue because the lack of reliable address information prevented the INS from finding 45 percent (1,851 of 4,112) of nonimmigrant aliens with potential awareness of foreign terrorists or their organizations.<sup>32</sup> Without accurate addresses, it is difficult for the INS to apprehend and remove aliens once they are ordered removed.

**The INS can implement more practical means to find and remove absconders.** We believe the INS can be more resourceful in its practices to identify absconders. Specifically, we found that the INS does not make the best use of the Internet to inform the public of absconders, or to provide an effective method for the public to report information on absconders to the INS. For example, starting with the INS's home page ([www.ins.usdoj.gov](http://www.ins.usdoj.gov)), finding directions for reporting violations of immigration law requires the user to select links and navigate through eight levels of information.

All reporting must be done to one of the INS field offices. We visited the web pages of nine INS District Offices (including California, Florida, New York, and Texas) and five INS Suboffices. Only 1 of the 14 pages we visited (Washington, D.C.) instructed the public how to report information on absconders or illegal activity through e-mail. The remaining 13 required the information to be submitted by mail, telephone (no toll-free numbers), or in person.

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<sup>31</sup> The INS, Office of Internal Audit, *Special Data Integrity Review*, 2001.

<sup>32</sup> GAO, *Homeland Security – INS Cannot Locate Many Aliens Because It Lacks Reliable Address Information* (Report No. GAO-03-188), November 21, 2002, p.12.

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Further, we examined the INS's website and found there is no posting of information about aliens who have outstanding removal orders (such as the listings of convicted sex offenders, or parents who owe child support); and no list of high-risk fugitives (such as the FBI's most wanted list). In fact, entering "absconder" into the INS search engine only returns six links to Congressional testimonies.

**The INS faces difficulty obtaining travel documents from some countries.** For certain countries, there are significant barriers beyond the INS's control that prevent the INS from obtaining travel documents for aliens. Some countries do not promptly process travel documents, while others impose restrictions on return of their citizens. Without proper travel documents, the INS cannot execute removal orders.

In September 2002, the OIG's audit of the INS's Institutional Removal Program reported 19 cases of delays by embassies or consulates to INS's requests for travel documents.<sup>33</sup> The audit report listed several countries (including Jamaica, Haiti, Guyana, the Bahamas, Ethiopia, Nigeria, India, and China) that the INS identified as uncooperative or that frequently delayed travel documents. During interviews, D&R officials stated they also had problems obtaining travel documents for aliens from Yemen, Laos, Vietnam, and Cambodia, as well as difficulty in removing Cuban nationals.

## **Recommendations**

We recommend that the INS:

6. Establish a program to correct the problems with missing and inaccurate data in the Deportable Aliens Control System and work with the EOIR to reconcile discrepancies between the INS and EOIR data systems.
7. Implement a shared data system, similar to the Interagency Border Inspections System, for case tracking with the EOIR to identify and process aliens with final orders.
8. Improve the utility of the INS's website to inform the public about high-risk absconders and to facilitate the reporting of leads on absconders.

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<sup>33</sup> DOJ, Office of the Inspector General, *Immigration and Naturalization Service Institutional Removal Program* (Report No. 02-41), September 2002.

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## Conclusion

As the INS prepares to move into the Department of Homeland Security, it faces a significant challenge in determining how to address long-term deficiencies in its ability to apprehend and remove nondetained aliens ordered removed from the United States. In 1996, we reported that the INS was ineffective at removing nondetained aliens with final orders, removing only 11 percent of the aliens. This review documented that the INS remains fundamentally ineffectual at meeting this challenge.

Our review found that the INS has not improved its performance and still removes only 13 percent of nondetained aliens with final orders. More importantly, we found that the INS was even less effective at removing some high-risk subgroups. The INS executed removal orders on only 6 percent of the nondetained aliens from countries that the U.S. Department of State has identified as sponsors of terrorism, and only 3 percent of denied asylum seekers. Neglecting to pursue these types of aliens is imprudent because we found examples of aliens in both groups who have committed terrorist acts in the United States. Although the INS has established the removal of criminal aliens as its highest priority, we found that the INS removed only 35 percent of nondetained criminals. While that is higher than the 13 percent overall removal rate for nondetained aliens, it still falls far short of the 92 percent removal rate that the INS achieved for detainees.

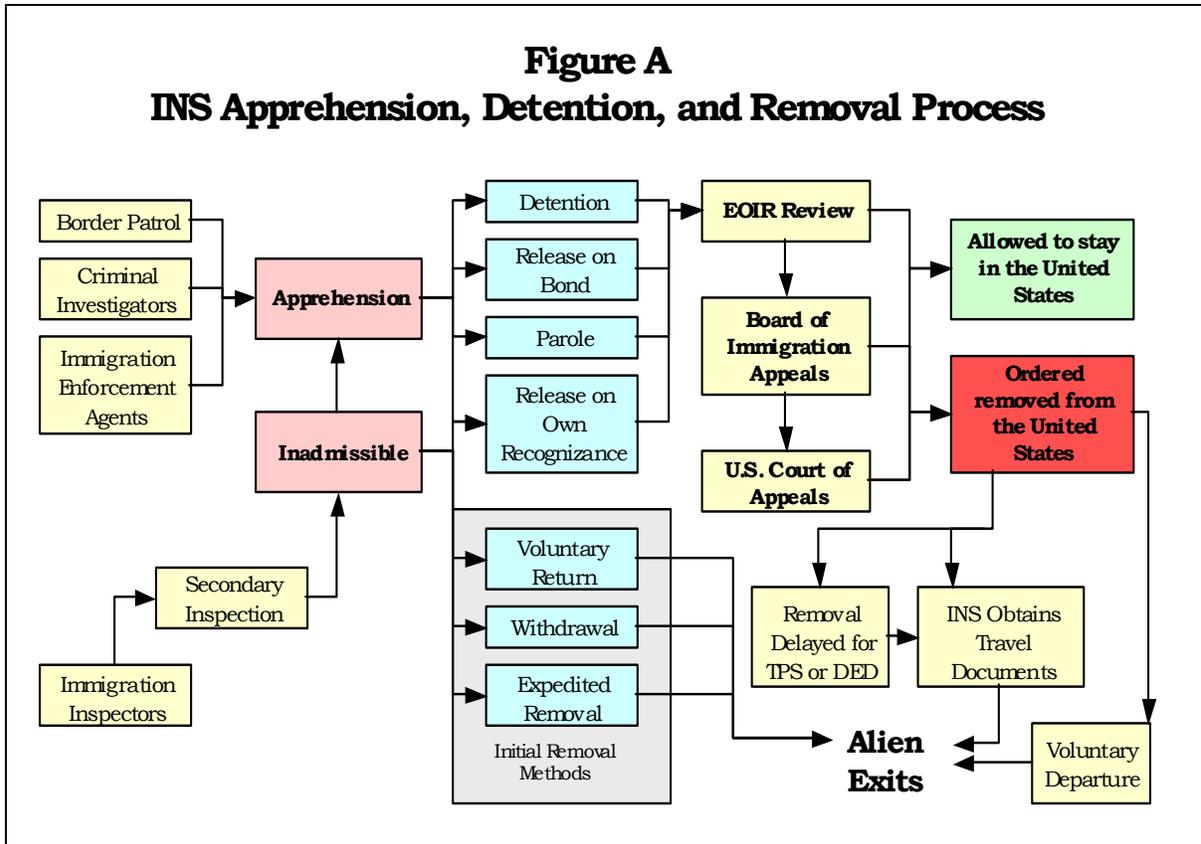
In examining the reasons for the INS's inability to improve its performance, we found that the INS did not implement the actions it agreed to take in response to our 1996 report in a complete or timely manner. In several instances, the INS acted to pursue absconders only in the aftermath of the September 11, 2001, terrorist attacks. In other cases, the INS was unable to document how it used funding provided by Congress to improve the removal of aliens, and could not provide any information on pilot programs that it had previously told us were being implemented. In addition to its failure to take corrective actions, we found the INS faces continued resource allocation issues and data problems, as well as external constraints. We also found that the INS does not effectively use all means at its disposal to improve its performance at removing aliens.

In summary, the INS has failed to correct the deficiencies we reported in 1996. The continued low removal rate for nondetained aliens demonstrates that the agency has not acted to effectively increase its performance in this critical area.

## APPENDIX A

### The Alien Removal Process

The processing of aliens after they are apprehended can follow several paths. Figure A depicts the INS's apprehension, detention, and removal process for aliens.



Source: INS Detention & Removal Service Program, *Critical Influences on INS Detention*, May 2001, p.4, and OIG analysis.

Illegal aliens who are not removed under expedited procedures, those who do not leave voluntarily, and those residing in the United States are apprehended and processed through the immigration system. The apprehending officer completes the initial paperwork and creates a record that serves as the basis for the INS's Detention and Removal (D&R) office to begin its alien case tracking process. Of particular importance is the Notice to Appear, which informs aliens about the immigration process and orders them to appear before an Immigration Judge for a hearing to determine their eligibility to remain in the United States.

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D&R staff decide whether or not to detain the aliens pending their hearings before the Executive Office for Immigration Review (EOIR). Normally, the INS detains aliens with criminal backgrounds, those who are a flight risk, those with mental illnesses, and those with dangerous physical illnesses, like contagious diseases. Other aliens are nondetained, the term for aliens who are either never taken into custody or who are released from custody on bond, on their own recognizance, or on parole. At any point in the process, the D&R staff or an Immigration Judge can decide to release an alien.

The D&R provides copies of appropriate documents to the EOIR and INS trial attorneys. The INS trial attorneys schedule court hearings with the EOIR and the hearing information is mailed to the aliens. At the hearing, an Immigration Judge examines the aliens' claims, and either allows them to remain in the United States or orders them removed. Aliens ordered removed may either waive their appeal rights or appeal the Immigration Judge's decision to the Board of Immigration Appeals and, under limited circumstances, to the Federal Courts. In addition, certain aliens may be eligible to seek temporary relief from being removed under different authorities (see Select Types of Temporary Relief box).

Once removal decisions are final, including expiration of any appeal periods or grants of temporary relief, the INS attempts to obtain travel documents to the destination country so the removal order may be executed.

Nondetained aliens are given time to arrange their affairs, after which they may be required to surrender to the INS for removal. Nondetained aliens may also be granted Voluntary Departure. Under Voluntary Departure, Immigration Judges and INS District Directors can allow aliens up to 120 days to exit the United States on their own (up to 60 days at the conclusion of removal proceedings and not to exceed 120 days prior to the completion). Aliens granted Voluntary Departure are required to report their arrival in their home country to a United States embassy.

**Select Types of Temporary Relief**

**Temporary Protected Status for Nationals of Designated States (P. L. 101-649). This law authorized the Attorney General to grant temporary protected status (TPS) to aliens from countries experiencing upheaval, during which time eligible aliens will not be removed, even if subject to a final order.**

**Deferred Enforced Departure (DED). By Executive Order or Presidential Memorandum, the President may grant aliens from select foreign countries temporary protection from removal from the United States for political or humanitarian reasons.**

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## APPENDIX B

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### **INS Implementation of the 1996 OIG Recommendations**

In response to the five recommendations in our 1996 inspection, the Immigration and Naturalization Service (INS) identified specific actions that it would take to correct the deficiencies we reported, and provided evidence to support its planned actions. We accepted the INS's proposed corrective actions as responsive to our recommendations. However, our current review found that the INS's implementation of the corrective actions was delayed or incomplete. Our analysis of the INS's actions in response to each recommendation follows.

**Recommendation 1: Take more aggressive actions to remove nondetained aliens, such as: moving more quickly to present surrender notices to aliens after receiving final orders.**

Our 1996 report found that the INS did not always send surrender notices to aliens in a timely manner after the final orders were issued. In its response, the INS listed several factors that limited its ability to quickly present surrender notices, but agreed to (1) collaborate with the Executive Office for Immigration Review (EOIR) to implement an effective final order notification system, (2) contract with the Vera Institute to design, implement, and assess a demonstration project to increase the effectiveness and efficiency of adjudication, release, reporting, and removal of nondetained aliens; and (3) conduct further field tests under which all aliens with final removal orders of deportation, and all alien absconders, were targeted for removal.

Notification System Enhancement. The INS completed the programming necessary to establish an interface between its Deportable Alien Control System (DACS) and EOIR's Automated Nationwide System for Immigration Review (ANSIR) system in 1997. Implementation of the interface was delayed until May 17, 1999. Further, after examining the potential ramifications of integrating the ANSIR and the DACS, the INS concluded on March 29, 2000, that a complete integration of the two systems could compromise the integrity of the DACS and decided not to pursue integration.

In our current review, we found that INS field officers can use the DACS to view (but not modify) downloaded individual records of final orders from ANSIR. Although the interface gives the INS an electronic notice that

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a final order of removal has been issued, the INS still cannot issue surrender notices to aliens until it receives a copy of the final order.

Vera Institute of Justice Supervised Release Contract. In 1996, the INS contracted with the Vera Institute of Justice to design, implement, and assess a supervised release demonstration project for a sample of 534 asylum seekers, criminal aliens, and undocumented workers. In its August 1, 2000, final report on the Appearance Assistance Program (AAP), the Vera Institute reported that it found regular supervised release to be a viable and statistically significant means for increasing court appearance at a lower cost than detention. The report recommended that the INS establish a supervised release pilot project.

In FY 1999, we conducted a limited scope inspection of the AAP and found contract award, survey design, and program implementation problems.<sup>B-1</sup> Our 1999 review recommended that the INS evaluate the Vera Institute's final recommendations, especially the claimed costs and benefits of expanding supervised release to other districts. That recommendation remains valid.

Field Test Pilot Projects. The INS informed us that it conducted a limited duration pilot project at the Philadelphia field office to test the effectiveness of targeting for removal all aliens with final orders and all alien absconders. The INS stated that, based on the positive results of that pilot project, it planned to conduct future field tests at offices of different sizes and population mixes before determining whether or not to expand the program. We attempted to examine the results of these pilot projects as a part of this review, but the INS was unable to provide any information regarding the reported pilot projects.

**Recommendation 2: Take more aggressive actions to remove nondetained aliens, such as delivering surrender notices instead of mailing them to aliens.**

In 1996, we found that incorrect addresses prevented mailed surrender notices from reaching many aliens, and recommended that the INS deliver the surrender notices to ensure that aliens are properly notified. The INS proposed an alternative action of changing their procedures (which necessitated conducting a rulemaking) to require that aliens be notified of their duty to surrender both in the Notice to Appear, which they are given when first apprehended, as well as at subsequent hearings before Immigration Judges or the Board of Immigration Appeals. The INS's

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<sup>B-1</sup> DOJ, Office of the Inspector General, *Contract Number COW-6-C-0038 with the Vera Institute of Justice*, (Report I-99-04), March 31, 1999.

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proposal also would bar aliens who did not comply with removal orders from seeking appeals or administrative relief. Providing notice of surrender requirements at each point in the process would prevent aliens from delaying their removal by claiming they were not notified of their duty to surrender.

On September 4, 1998, the INS published proposed rule changes to implement the new procedures. According to the INS, the rulemaking was not considered a priority and was allowed to lapse. Only after the attacks of September 11, 2001, did the INS publish a second supplementary proposed rule, entitled *Requiring Aliens Ordered Removed from the United States to Surrender to the Immigration and Naturalization Service for Removal*. Published on May 9, 2002, the revised proposed rule broadens notification methods and requires all properly notified aliens to surrender within 30 days. In addition, aliens who fail to comply with this mandate will be barred from applying for administrative relief from removal or from returning legally to the United States for 10 years. The requirements of the proposed rule would apply to all aliens currently in immigration proceedings, as long as they receive the requisite notice. As of January 2003, the proposed rule is not final and Recommendation 2 remains open.

**Recommendation 3: Take more aggressive actions to remove nondetained aliens, such as taking aliens into custody at hearings when final orders are issued at hearings.**

Because our 1996 review found that the removal rate for nondetained aliens was extremely low, we recommended that the INS increase the number of aliens it detains after they are given final orders or develop a better strategy for dealing with nondetained aliens. The INS identified several procedural barriers that prevented it from taking more aliens into custody, and proposed that, as an alternative, the OIG could examine its progress of removing aliens. We agreed, and on July 17, 1998, the INS provided us with a copy of its *FY 1997 Removals Priority Implementation Plan*, which described the INS's removal goals, and the *Lead Official's Report of the FY 1997 Year-End Review*, which reported the INS exceeded its goal of 93,000 removals in FY 1997 by accomplishing 111,794 removals.

**Recommendation 4: Take more aggressive actions to remove nondetained aliens, such as pursuing aliens who fail to appear and reviewing procedures for closing cases for aliens who fail to appear.**

This recommendation resulted from our finding that the INS district offices did not actively pursue nondetained aliens with final removal orders

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who failed to appear, and that, pursuant to a 1982 policy memorandum, the INS was improperly closing some inactive cases in several categories.<sup>B-2</sup> The INS concurred in part with the recommendation and committed to: 1) use an FY 1996 budget enhancement of \$11.2 million to fund 142 positions to locate and remove alien absconders who have been ordered deported; 2) revisit and if necessary update its policy and priorities with regard to closing inactive cases; and 3) initiate specific enforcement actions on absconders.

To review the INS's action, we attempted to examine how the INS used the FY 1996 budget enhancement of \$11.2 million to create absconder removal teams. The INS was unable to document how the funding was used or that any absconder teams were created or deployed.

Regarding the directive on policy-closures, in November 1996, the INS stated that cases with no leads after extended periods of time were unlikely to result in locating the aliens, and decided not to revise the policy on closing cases of aliens who fail to appear. The INS guidelines allow policy-closure after varying periods in four categories of cases. Also, even though cases may be closed, the INS can reopen them if new information or leads are found. We accepted the INS's position, and closed Recommendation 4 on March 20, 1997.

In our current review, we found that the INS improperly policy-closed 21 of the cases in our sample of 308 nondetained aliens (7 percent), and 24 of the cases in our sample of 470 nondetained aliens from state sponsors of terrorism (5 percent). None of the 45 policy-closed cases fell into one of the four allowable categories. The INS informed us that, notwithstanding its 1997 response to our prior report, it is updating its policy-closure procedures to ensure that they are more uniformly applied across districts.

**Recommendation 5: Take more aggressive actions to remove nondetained aliens, such as coordinating with other governmental agencies to make use of all databases available for tracking aliens who fail to appear.**

In response to this recommendation, the INS reported that it would use an FY 1996 \$11.2 million budget enhancement to establish absconder removal teams. The INS also agreed to enter warrants and removal orders into the NCIC; develop an automated list of criminal absconders to circulate

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<sup>B-2</sup> The categories of cases being policy-closed included those where the INS had no contact with the alien for more than a year after the alien failed to appear for a proceeding; aliens with criminal backgrounds who failed to surrender for deportation after five or more years with no contact; and non-criminal aliens who failed to surrender for deportation after three or more years with no contact.

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within the law enforcement community; and share information on absconders with state Departments of Motor Vehicles, NCIC, the Social Security Administration, and the Internal Revenue Service.

However, in October 1996, the INS reported that, with the exception of NCIC, it was not feasible to use external agency databases to perform name searches for alien absconders. The INS proposed to continue entering alien absconders into the NCIC; use the absconder removal teams to experiment with ways to locate absconders; and use a computer user group to conduct a comprehensive review of how the INS integrates its systems with Federal, state, and local systems. Our current review found that, prior to September 11, 2001, the INS did not establish absconder removal teams, enter names of absconders into the NCIC, or develop an automated list of criminal absconders for circulation within the law enforcement community.

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## **Appendix C**

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### **Fugitive Operations Teams**

In March 2002, the INS established a National Fugitive Operations program with the goal of eliminating the backlog of fugitive cases over the next 10 years. All the INS Districts were expected to implement fugitive apprehension programs to support this effort.

As a result of the USA PATRIOT Act, the INS subsequently received funding and positions to establish Fugitive Operations Teams. The INS assigned teams consisting of one Supervisory Deportation Officer, three Deportation Officers, and one Deportation Assistant to several Districts across the United States.

According to the INS, fugitive operations teams will pursue fugitive aliens based on their criminal record, alien file location, and removability. Priority I fugitive aliens, for example, are criminal alien cases with alien files located in INS field offices, while Priority II fugitive aliens have their alien files in storage at the National Records Center. Finally, Priority III fugitive aliens are non-criminals.

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## Appendix D

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### List of Acronyms

AAI – Absconder Apprehension Initiative  
AAP – Appearance Assistance Program  
ANSIR – Automated Nationwide System for Immigration Review  
BIA – Board of Immigration Appeals  
BOP – Federal Bureau of Prisons  
D&R Office – Detention and Removal Office  
DACS – Deportable Alien Control System  
DED – Deferred Enforced Departure  
DHS – Department of Homeland Security  
EOIR – Executive Office for Immigration Review  
FBI – Federal Bureau of Investigation  
FY – Fiscal Year  
GAO – U.S. General Accounting Office  
IIRIRA – Illegal Immigration Reform and Immigration Responsibility Act  
INA – Immigration and Naturalization Act  
INS – Immigration and Naturalization Service  
LESC – Law Enforcement Service Center  
NCIC – National Crime Information Center  
OIA – Immigration and Naturalization Service’s Office of Internal Audit  
OIG – Office of the Inspector General  
TPS – Temporary Protected Status  
USAO – United States Attorney’s Office  
USMS – United States Marshals Service