



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

**Voluntary Departure:
Ineffective Enforcement
and Lack of Sufficient
Controls Hamper the
Process**

March / 1999

Report Number I-99-09

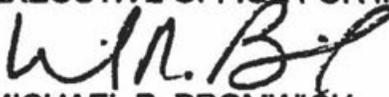


March 31, 1999

MEMORANDUM FOR DORIS MEISSNER
COMMISSIONER
IMMIGRATION AND NATURALIZATION SERVICE

KEVIN D. ROONEY
DIRECTOR
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

FROM:


MICHAEL R. BROMWICH
INSPECTOR GENERAL

SUBJECT: Voluntary Departure: Ineffective Enforcement and Lack of Sufficient Controls Hamper the Process, Report Number I-99-09

In our continuing effort to address illegal immigration issues, the Office of the Inspector General (OIG), Inspections Division, assessed how Immigration and Naturalization Service (INS) district officers and Executive Office for Immigration Review (EOIR) immigration judges implement voluntary departure. Voluntary departure is a process by which an illegal alien agrees to leave the United States voluntarily, thus avoiding the penalties and stigma of removal. Voluntary departure is an alternative to a formal order of removal for eligible illegal aliens to leave the country through a streamlined and quicker process while potentially saving the U.S. Government detention and removal costs.

Our report findings demonstrate weaknesses in conducting criminal history checks, tracking alien departures, and overall enforcement of voluntary departure orders. A discussion of our most significant findings and recommendations follows.

Criminal History Checks

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 prohibits aggravated felons from receiving voluntary departure. INS relies on either the Federal Bureau of Investigation's National Crime Information Center (NCIC) system or

fingerprint criminal history checks to ensure that no aggravated felons are granted voluntary departure. EOIR immigration judges currently do not require criminal history checks to determine if the alien is an aggravated felon and thus is ineligible for voluntary departure.

We found that adequate criminal history checks identifying aggravated felons are not performed on all illegal aliens granted voluntary departure. INS district officers perform few, if any, criminal checks prior to granting voluntary departure to apprehended aliens. Immigration judges frequently issue decisions without completed checks. As a result, INS district officers and immigration judges inappropriately grant voluntary departure to some aggravated felons.

To ensure that no aggravated felons receive voluntary departure, we recommend that INS district officers perform NCIC criminal history checks before granting voluntary departure or placing aliens into removal proceedings. We further recommend that the INS trial attorneys introduce the results of checks into evidence at proceedings and recommend a regulatory change so that immigration judges do not grant voluntary departure without the checks.

Tracking

INS cannot verify that aliens ordered to leave the United States do so. To be effective, voluntary departure should have a sound departure verification and tracking system. INS's lack of knowledge about whether illegal aliens leave the country precludes INS from determining whether voluntary departure provides a more streamlined, quicker process than formal removal that saves the U.S. Government detention and removal costs.

To address this problem, we recommend that INS implement an effective departure verification system for immigration judge-granted voluntary departures and a system for identifying and tracking each alien granted voluntary departure by INS district officers.

INS's lack of effective departure verification systems is more widespread than is presented in this report regarding voluntary departures. INS also has problems tracking nonimmigrants who overstay their visas. In a September 1997 OIG report, Inspection of INS Monitoring of Nonimmigrant Overstays, we recommended improving departure verification records for nonimmigrants and ensuring complete and reliable data to support enforcement efforts.

Enforcement

Lack of a tracking system also negatively affects INS's ability to enforce voluntary departure orders. INS enforcement of voluntary departure orders is minimal. INS does not seek and apprehend aliens who fail to leave; instead, they become fugitives who may continue to live and work illegally in the United States.

Although INS has primary responsibility for enforcing immigration judges' orders, immigration judges could play a more significant role in assisting with the enforcement of voluntary departure orders. We found that immigration judges are not adequately using their authority to assist INS's enforcement efforts. Voluntary departure bonds are not fully utilized by immigration judges, and we found no evidence that immigration judges attach any conditions other than bonds to voluntary departure orders. Attachment of other conditions could increase the likelihood of an alien leaving the country when required.

We recommend that INS develop an enforcement plan, or revise its current plan, to sufficiently address those aliens who have violated immigration judge-granted voluntary departure orders in conjunction with developing a system to verify departures. We also recommend that EOIR issue clarifying guidance that immigration judges set voluntary departure bonds whenever possible to assist INS in enforcing voluntary departure orders.

Summary

Our report offers these recommendations to strengthen voluntary departure and address the problems identified in this report. Our recommendations are addressed to INS and EOIR because both have important roles in the successful implementation of voluntary departure as an alternative form of removal.

We sent copies of the draft report to your offices on January 15, 1999, and requested written comments on the findings and recommendations. As we did not receive a response from INS, all four recommendations addressed to INS are unresolved. We will continue to work with INS to elicit their comments and planned actions to address the recommendations.

EOIR provided written comments on March 10, 1999. We have attached EOIR's response as Appendix E. On the basis of its comments, we consider two out of the four recommendations unresolved. Appendix F provides a detailed analysis of EOIR's response, including what additional actions are needed. Please respond by May 14, 1999, clarifying agreement or disagreement with the report recommendations and

Doris Meissner
Kevin D. Rooney
Page 4

providing us with a plan of action. Guidance on report follow-up and resolution can be found in Department of Justice Order 2900.10.

We appreciate the cooperation that your staff extended to us as we conducted our review. If you have any suggestions of how we might improve our review process, or if we can provide you with any additional information, please let us know.

Attachment

cc: Kathleen Stanley
Liaison
Immigration and Naturalization Service

Peggy Philbin
Liaison
Executive Office for Immigration Review

Vickie L. Sloan
Director
Audit Liaison Office

TABLE OF CONTENTS

INTRODUCTION	1
RESULTS OF THE INSPECTION	8
CRIMINAL HISTORY AND ELIGIBILITY CHECKS	8
Prevalence of Criminal History Checks	8
Convicted Criminals	11
Other Eligibility Requirements	12
DEPARTURE VERIFICATION IN PROCEEDINGS	14
Illegal Aliens Appear Not to Leave	14
Lack of an Effective Verification System	16
ENFORCEMENT OF VOLUNTARY DEPARTURE ORDERS	18
Ineffective Enforcement	18
Voluntary Departure Bonds	19
Attachment of Other Conditions	20
TRACKING GRANTS OF VOLUNTARY DEPARTURE	21
Deportable Alien Control System	22
Paper Transportation Logs	23
RECOMMENDATIONS	24
APPENDIX A: THE EOIR REMOVAL PROCEEDINGS PROCESS	27
APPENDIX B: THE INS VOLUNTARY DEPARTURE PROCESS	28
APPENDIX C: METHODOLOGY	29
APPENDIX D: THE INS DEFINITIONS OF AGGRAVATED FELONY	32
APPENDIX E: EXECUTIVE OFFICE FOR IMMIGRATION REVIEW RESPONSE TO DRAFT REPORT	34
APPENDIX F: OFFICE OF THE INSPECTOR GENERAL'S ANALYSIS OF MANAGEMENT'S RESPONSE	42

INTRODUCTION

The presence of illegal aliens in the United States is an issue of increasing concern to the American public and to Federal, state, and local policymakers. The Immigration and Naturalization Service (INS) estimates that 5 million illegal aliens currently live in the United States and that the illegal alien population grows by about 275,000 each year. INS's enforcement mission includes removing aliens living in the United States who have either entered the country illegally or who entered by legal means but overstayed their visas.

In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) in response to ongoing concerns about illegal immigration.¹ The new legislation imposed stricter rules affecting aliens attempting to enter the United States illegally and illegal aliens living in the United States. IIRIRA included new restrictions in the rules for the voluntary departure process.

In this inspection, we reviewed how INS district officers and Executive Office for Immigration Review (EOIR) immigration judges implement voluntary departure. We sought to determine whether INS district officers and immigration judges adequately establish aliens' eligibility for voluntary departure, and whether aliens granted voluntary departure actually leave the United States.

INS is the primary Federal agency responsible for the enforcement of U.S. immigration laws and regulations. The INS Office of Field Operations directs operations in INS's 33 districts, where district officers, among many other duties, grant voluntary departure. EOIR, a Department of Justice agency separate from INS, interprets immigration laws and regulations and conducts administrative hearings and appellate reviews. EOIR is not an enforcement agency; rather, immigration judges adjudicate individual immigration cases according to their merit. EOIR's 220 immigration judges preside over removal proceedings in 52 courts throughout the United States and grant voluntary departure to the aliens they consider eligible.

¹The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Public Law 104-208, 110 Stat. 3009 (September 30, 1996), amended the Immigration and Nationality Act (INA), which was first passed in 1952. INA § 240B contains the legal authority for voluntary departure. The regulatory requirements for voluntary departure can be found in Title 8 of the Code of Federal Regulations, § 240, Subpart C.

Voluntary Departure

Voluntary departure is a process by which an illegal alien who would otherwise be removed (formerly referred to as deported) or granted other forms of relief agrees to leave the country voluntarily.² A voluntary departure grant enables aliens to avoid the penalties and stigma of removal while potentially saving the U.S. Government detention and removal costs. When an alien has been ordered removed, that alien may not legally enter the United States or receive any other immigration benefit for 10 years.

Voluntary departure allows aliens to avoid the 10-year ban on re-entry and receiving benefits by agreeing to depart the United States voluntarily, thus carrying no impediment to legally returning to the United States. Immigration law includes no limit on the number of times that an alien may receive voluntary departure, as long as the alien actually leaves the United States within the specified time frame. However, any alien who receives a voluntary departure grant and fails to depart within the specified time frame is ineligible for a period of 10 years for certain forms of relief, including another grant of voluntary departure, cancellation of removal, and adjustment of status.³

Aliens who receive voluntary departure either entered the United States illegally, or in some other way violated their immigration status. Many entered the United States by crossing the Mexican or Canadian border, on foot or in vehicles, and avoiding inspection by an immigration inspector. A smaller number entered illegally by ship. Some of those who entered illegally by land or sea may have paid alien smugglers for their passage into the United States. Other aliens who receive voluntary departure entered the country legally with a visa, usually by air, but remained past the date on which they were required to leave; INS calls these aliens "visa overstays."⁴ Aliens may also fail to comply with the conditions of their immigration status (e.g., conditions regarding their right to employment). Regardless of how they entered the country, all aliens receiving voluntary departure are illegally in the United States and could be removed.

² Here, and throughout the report, we will use the term "removal" in place of "deportation" because of changes in terminology due to the 1996 amendments to the INA.

³ Certain aliens, who would otherwise be removable, may be eligible for cancellation of removal under INA § 240A. This type of relief from removal concludes removal proceedings against an alien and grants lawful permanent resident status to the alien. Adjustment of status under INA § 245 is a form of relief that is separate from cancellation of removal, but a grant of either form of relief results in permanent resident status.

⁴ The September 1997 Office of the Inspector General, Inspections Division report, Immigration and Naturalization Service Monitoring of Nonimmigrant Overstays, number I-97-08, considers the problem of nonimmigrants who enter the country with a legal visa but remain past the date on which they were required to leave.

Both EOIR and INS grant voluntary departure to illegal aliens; however, they use different terminology to refer to voluntary departure. For the purposes of this report, we use the term voluntary departure to describe the alternative to removal granted by either INS district officers or EOIR immigration judges. EOIR uses the term voluntary departure to describe the alternative to removal granted by immigration judges. INS refers to most voluntary departures granted by INS district officers and Border Patrol agents as voluntary returns. Despite differences in terminology, immigration judge-granted voluntary departures and INS-granted voluntary returns are both forms of voluntary departure.

Who Grants Voluntary Departure?

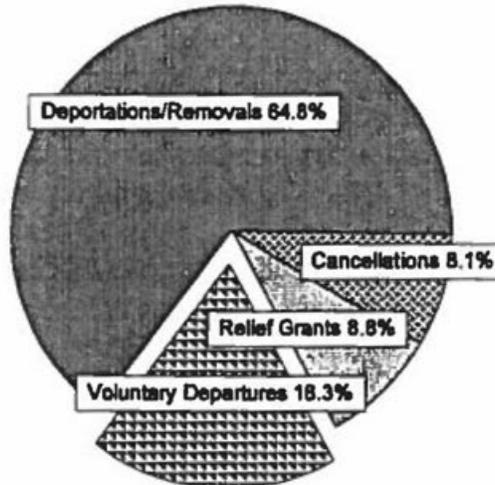
EOIR immigration judges and INS district officers grant voluntary departure to illegal aliens.⁵ Immigration judges grant voluntary departure in EOIR removal proceedings. During removal proceedings, aliens often appear before an immigration judge to request voluntary departure, asylum, or some other form of relief from removal (see flow chart, "The EOIR Removal Proceedings Process," in Appendix A). In each removal proceeding case, an INS trial attorney, who represents the U.S. Government, and the alien or the alien's attorney make arguments and present evidence. Immigration judges make their decisions to order aliens removed or grant them some form of relief by weighing the charges, facts, and issues of law presented to them by the attorneys. A voluntary departure grant from an immigration judge includes a specific date by which the alien must leave the United States. Unless the alien has been detained by INS during the removal proceedings, the alien must depart unescorted and at his or her own expense by the voluntary departure date.

In fiscal year 1997, immigration judges issued 170,124 decisions in deportation or removal cases. That same year, immigration judges granted voluntary departure to 31,099 removable aliens, representing 18 percent of all decisions in removal proceedings (see Figure 1).⁶

⁵Border Patrol agents also grant voluntary departures (voluntary returns in INS terminology). In fiscal year 1997, Border Patrol agents granted 1.3 million voluntary departures to illegal aliens. Most of these aliens were Mexicans apprehended on the southwest border of the United States who were immediately returned across the border. We did not review Border Patrol grants of voluntary departure in this inspection because the Border Patrol's operations are significantly different from the practices studied here.

⁶In fiscal year 1997, immigration judges still ruled on many pre-IRIRA deportation cases as well as post-IRIRA removal cases. In addition to the 31,099 voluntary departure grants, these decisions included 110,222 deportations or removals, 14,864 grants of relief, 13,831 terminations, and 88 decisions classified by EOIR as "other." These numbers do not include other completions such as administrative closings, changes of venue, transfers, and temporary protective status.

Figure 1. Immigration Judge Decisions
Fiscal Year 1997



Source: EOIR Statistics

In addition to the voluntary departures granted by immigration judges in EOIR removal proceedings, INS district officers grant voluntary departure (referred to by INS as voluntary return). Most of these aliens, unlike those who receive voluntary departure grants from immigration judges, are removed under safeguards, meaning that they are escorted to land ports or airports by INS district office personnel. A smaller number of aliens are released to return to their home countries at their own expense, not under INS safeguards. Removals under safeguards typically involve the transportation of Mexicans to the border on INS buses or Justice Prisoner and Alien Transportation System (JPATS) planes within days of their apprehension.⁷ INS uses commercial airline flights to return most non-Mexicans to their native countries. (See flow chart, "The INS Voluntary Departure Process," in Appendix B). In fiscal year 1997, INS district officers granted voluntary departure to nearly 100,000 illegal aliens from the interior of the United States.⁸

⁷ JPATS, operated by the United States Marshals Service, is an air transportation system available to INS, the Bureau of Prisons, and the United States Marshals Service for the transportation of aliens or prisoners. INS districts can use JPATS flights for returning aliens to their native countries or moving them to detention centers within the United States.

⁸ INS defines an illegal alien "in the interior" as an alien who has been present in the United States for 72 hours or more, regardless of where in the country the apprehension took place.

How IIRIRA Changed Voluntary Departure

IIRIRA changed the rules for voluntary departure. Prior to IIRIRA, INS district officers and immigration judges used voluntary departure to allow certain aliens to remain in the United States for various reasons, including humanitarian concerns (family emergencies, medical reasons, school attendance) and to allow aliens the time to pursue legitimate immigration claims without having to leave the country. Aliens received grants of voluntary departure allowing them up to one year to depart, and some aliens remained in the country for years by requesting and receiving annual extensions of their voluntary departure grants.

As under the old law, IIRIRA precludes aggravated felons from receiving grants of voluntary departure. However, the new law expanded the crimes that INS defines as an aggravated felony (see Appendix D). INS district officers perform criminal history checks using the Federal Bureau of Investigation's (FBI) National Crime Information Center (NCIC) and other state and Federal data bases to determine which aliens have been convicted of felonies. Congress also added a provision to the new law specifically banning voluntary departure grants for any alien who has engaged, is engaging, or at any time after entry engages, in terrorist activity.⁹ Determining an alien's history of terrorist activity is more difficult than obtaining information on criminal history.

In addition to the prohibitions against aggravated felons and terrorists, aliens who receive voluntary departure grants from immigration judges must meet further eligibility criteria. These criteria vary depending on when in the removal proceeding process the judge grants voluntary departure. IIRIRA created a new distinction between voluntary departure grants prior to the conclusion of removal proceedings versus at the conclusion of removal proceedings. Prior to the conclusion of removal proceedings, an alien must:

- concede removability, meaning the alien must admit illegal presence in the United States with no legal right to remain;
- withdraw all claims to other forms of relief; and
- waive all rights of appeal to other forms of relief.

⁹The previous law prohibited aliens connected to "certain offenses touching the national security" from receiving voluntary departure.

At the conclusion of removal proceedings, aliens do not need to meet the above criteria to qualify for voluntary departure. Instead, they must demonstrate:

- good moral character for the previous five years;
- means and intention to depart; and
- physical presence in the United States for at least one year preceding the application for voluntary departure.

IIRIRA specifically incorporates new penalties and explicitly authorizes conditions on voluntary departure grants to help ensure aliens' departures. According to the new law, an alien who fails to depart voluntarily by the date specified is subject to a civil penalty of between \$1,000 and \$5,000. IIRIRA also raised the prohibition on receiving other forms of immigration benefits from 1 to 5 years to 10 years for aliens who fail to obey their voluntary departure orders. Conditions had not been specifically authorized under the prior law; however, the new law permits INS district officers and immigration judges to attach any conditions they deem necessary to ensure departure.

Congress also established a strict time limit for voluntary departure grants in IIRIRA. Under the new time limit, INS district officers and immigration judges may allow aliens no more than 120 days to leave the United States and may not grant extensions. Those aliens who request voluntary departure from an immigration judge at the conclusion of removal proceedings may only receive up to 60 days to depart the country rather than the 120 days permitted for voluntary departure granted by an INS district officer or by an immigration judge prior to the conclusion of proceedings. In addition, aliens can no longer work legally in the United States after receiving voluntary departure grants.¹⁰ Prior to IIRIRA, INS permitted aliens to work until their required departure date.

In one respect, Congress made the voluntary departure eligibility requirements for aliens in removal proceedings more lenient. Prior to IIRIRA, to be eligible for voluntary departure, aliens in removal proceedings had to prove that they had exhibited good moral character for the five years preceding their application for voluntary

¹⁰ Aliens participating in the Family Unity Program are the only exception to the 120-day time limit for voluntary departure. The Family Unity Program allows legal aliens to apply for certain immigration benefits for their spouses or unmarried children. Family Unity Program participants are eligible to receive voluntary departure grants for periods of up to two years. INS also permits aliens participating in the Family Unity Program to work during their voluntary departure period. Section 301 of the Immigration Act of 1990, Public Law 101-649, authorized the Attorney General to temporarily stay deportations and issue work authorizations when in the interest of maintaining family unity. Implementing regulations are in Title 8 of the CFR, Part 236, Subpart B.

departure, and that they had the willingness and ability to depart. As a result of IIRIRA, aliens no longer must meet those tests prior to the conclusion of removal proceedings.

Scope and Methodology

We reviewed the use of voluntary departure by INS district officers and EOIR immigration judges. We conducted field site visits in March and April of 1998 in Los Angeles, CA, San Francisco, CA, Washington, D.C., and New York, NY. At each location, we interviewed INS and EOIR officials, reviewed INS and EOIR files, and observed removal proceedings. We selected three different samples in order to test whether aliens granted voluntary departure by INS district officers and immigration judges were eligible to receive it and actually left as ordered. Appendix C contains a thorough discussion of our inspection methodology.

RESULTS OF THE INSPECTION

CRIMINAL HISTORY AND ELIGIBILITY CHECKS ARE NOT PERFORMED CONSISTENTLY

Eligibility requirements for receiving voluntary departure vary depending on whether INS district officers or immigration judges grant it and when it is granted. The law prohibits convicted aggravated felons from receiving voluntary departure, no matter when or by whom voluntary departure is granted.¹¹ However, both INS district officers and immigration judges grant voluntary departure without ensuring that all eligibility criteria are met. Consequently, some ineligible aliens, including criminals, inappropriately receive voluntary departure.

Criminal History Checks Are Not Performed on Every Alien

As a technical matter, neither the law nor the regulations require that INS or EOIR conduct criminal history checks to determine whether or not aliens are aggravated felons. However, the law does prohibit either component from granting voluntary departure to aggravated felons, and such checks are the primary means available to determine an alien's criminal background. INS relies on criminal history checks to ensure that no aggravated felons are granted voluntary departure. Criminal history checks typically include entering the alien's name and birthdate in appropriate state and Federal criminal history data bases, such as those accessed through the FBI's NCIC. In addition, many, although not all, aliens are also fingerprinted during removal proceedings.¹² INS headquarters and district officials told us the factors that can influence whether or not officers perform criminal history checks include insufficient time, the number of aliens apprehended at once, access to computer terminals, and lack of detention space.

INS district officers are responsible for performing criminal history checks on aliens who they apprehend and place into EOIR removal proceedings. The role of INS trial attorneys, who represent the U.S. Government in each case, in verifying the completion of these checks is undefined. INS trial attorneys in some districts verify,

¹¹ IIRIRA included a stricter definition of aggravated felony. The definition can be found in INA § 101(a)(43), 8 U.S.C. 1101(a)(43). See Appendix D.

¹² Aliens are fingerprinted in removal proceedings when they request asylum and some other forms of relief. Although fingerprinting is not generally performed for the purpose of voluntary departure, immigration judges can use the results in order to assess an alien's eligibility for voluntary departure.

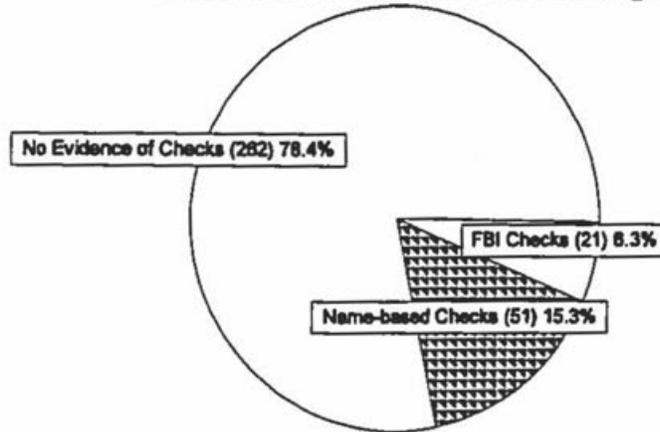
complete, and submit the checks as evidence, while trial attorneys in other districts may not have the time or the resources to perform these tasks. Regardless, immigration judges depend upon INS to provide them with accurate information on the aliens who appear in their courtrooms. If the results from criminal history checks have not been presented as evidence, immigration judges rely on the attestation of aliens on their criminal backgrounds. Without access to current criminal history checks, immigration judges may grant voluntary departure, or other forms of relief from removal, to aliens who are ineligible.

We found that immigration judges frequently issue their decisions without the benefit of completed criminal history checks. To determine whether criminal history checks were performed on aliens granted voluntary departure by immigration judges, we reviewed 334 cases of aliens who were granted voluntary departure from our four field site locations (see Appendix C, pages 29-30, for an explanation of our data set). As shown in Figure 2, we found no evidence that criminal history checks, using fingerprint-based or name-based systems, had been completed in 262 out of the 334 cases (78 percent). Of the 334 aliens who were granted voluntary departure, we found FBI responses to fingerprint checks in only 21 (6 percent) of the cases.¹³ We found that checks using name-based criminal history systems had been performed on an additional 51 (15 percent) of our sample.¹⁴

¹³ Several INS district counsels told us that responses from the FBI can take as long as 180 days, which may explain the discrepancy in the files between the fingerprint cards and the responses. The delays in the process of receiving responses force immigration judges to either order continuances in the cases or issue their decisions without the benefit of the FBI criminal history checks. In our review of alien's files, we found that it was not possible to determine which cases had responses pending from the FBI.

¹⁴ Name-based systems are data bases established using the names and dates of birth of individuals. These data bases are sometimes searched using other identifiers (e.g., identifying numbers), but they are intended to identify individuals uniquely by name. Dates of birth distinguish between people with the same name. It takes approximately 10 minutes to conduct most name-based checks in NCIC, although sometimes conviction information must be confirmed by telephone with police departments and courts.

**Figure 2. Criminal History Checks
Performed in EOIR Removal Proceedings**

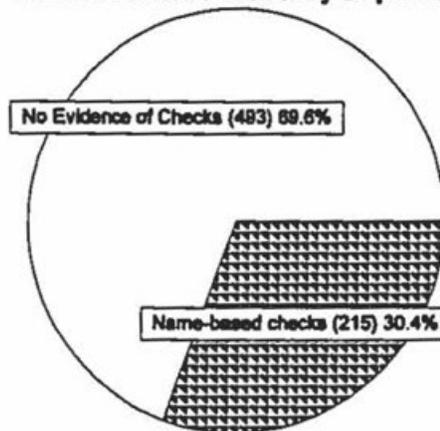


Source: *OIG Sample of INS Alien Files (n=334)*

To determine whether INS district officers perform criminal history checks before granting voluntary departure, we collected Record of Deportable Alien forms (I-213s) issued in the four field sites we visited for the months of October 1997 and February 1998. INS uses this form to document each voluntary departure. As Figure 3 demonstrates, we found that only 215 (30 percent) out of 708 of the Record of Deportable Alien forms contained evidence that an INS officer checked for criminal history before granting voluntary departure.¹⁵

¹⁵ INS enforcement procedures require that the Record of Deportable Alien (revised April 1, 1997) be prepared for all aliens referred by the apprehending officer for removal or prosecution. The most recent official Record of Deportable Alien calls for INS personnel to provide information on criminal history, if any, in a specific block labeled "Criminal Record" as well as in the block labeled "Narrative." INS district officers used various versions of the Record of Deportable Alien form for the cases in our sample, and almost all of them explicitly called for criminal history checks.

**Figure 3. Criminal History Checks
for INS-Granted Voluntary Departures**



Source: OIG Sample of Records of Deportable Alien Forms (n=708)

Voluntary Departure Is Granted to Some Convicted Criminals by INS District Officers and Immigration Judges

Because criminal history checks are not consistently performed, some aggravated felons receive voluntary departure from immigration judges and INS district officers. To determine whether *any* convicted criminals were inappropriately granted voluntary departure by immigration judges, we performed NCIC checks on a different sample of 343 voluntary departure grants from the EOIR database (see Appendix C, page 30, for a discussion of our data set). We found that 46 (13 percent) of the illegal aliens in this sample had criminal records in NCIC. Of those, 11 aliens (3 percent) were convicted aggravated felons. The felony convictions in our sample included grand theft, possession and sale of narcotics, forgery of monetary instruments, and sale of illegal weapons.

An additional 11 of the 46 illegal aliens with criminal records in NCIC had been convicted of misdemeanors. Although aliens convicted of misdemeanors are eligible for voluntary departure, the seriousness of some of the charges against them raises the question of whether aliens with significant criminal convictions should instead be ordered removed so that they will be barred from legal reentry to the United States for 10 years. The misdemeanor convictions in our sample included corporal injury to a spouse or cohabitant, possession of forgery instruments, driving under the influence of

alcohol, and theft. Some examples of aliens with multiple misdemeanor convictions included:

- one alien convicted of seven separate misdemeanors, most of them burglaries, in a 15-month period, and
- one alien convicted of the misdemeanor offense of driving under the influence of alcohol on two separate occasions in less than a year and a half after a previous misdemeanor conviction for heroin possession.

To determine whether INS district officers grant voluntary departure to convicted criminals, we performed our own checks in NCIC and INS's Deportable Alien Control System (DACS) on 70 of the 708 INS-granted voluntary departures we reviewed.¹⁶ We found that 6 of the aliens (9 percent) had previous criminal convictions, including two aggravated felonies. Nevertheless, INS district officers granted voluntary departure to all of them, including the aggravated felons.

The problem of allowing criminal aliens to depart voluntarily rather than detaining and placing them into removal proceedings extends to Border Patrol apprehensions as well. In the September 1998 Office of the Inspector General (OIG), Inspections Division report, Border Patrol Drug Interdiction Activities on the Southwest Border, number I-98-20, a sample of 426 drug seizure cases included 154 aliens who Border Patrol agents apprehended at the scene and INS district officers returned to Mexico through voluntary departure. These 154 aliens included 17 criminal aliens who were granted voluntary departure after INS had referred them for prosecution, placed detainees on them, tracked them through their criminal proceedings, and ultimately took custody of them after they completed their sentences. The report recommended that Border Patrol agents not grant voluntary departure when there is reason to believe that the alien has engaged in drug trafficking.

Lack of Evidence Confirming Immigration Judges' Application of Other Eligibility Requirements

Illegal aliens granted voluntary departure by an immigration judge must meet more eligibility requirements than those who receive voluntary departure from an INS district officer. By law, the eligibility requirements become more stringent the longer the

¹⁶We did not seek to determine the extent of this problem, only whether or not INS district officers ever grant voluntary departure to convicted criminals; therefore, we conducted follow-up on only 70 of the 708 Records of Deportable Alien forms to make this determination due to resource and time constraints that, while sufficient to establish that such results occur, is not sufficient to statistically project the full extent of the problem.

aliens remain in removal proceedings. Prior to the conclusion of removal proceedings, an alien must concede removability, withdraw all claims to other forms of relief, and waive all appeals. At the conclusion of removal proceedings, aliens do not need to meet the above criteria. Instead, they must demonstrate good moral character, means and intention to depart, and one year's physical presence in the United States.

We found very little evidence in our file reviews and interviews confirming that immigration judges apply these eligibility requirements to every alien who requests voluntary departure. Immigration judges may in fact consider the eligibility criteria in every case, but because of the lack of documentation in EOIR files, we had no means of testing the basis of their decisions.

In addition, we witnessed and examined examples in case files of immigration judges accepting the testimony of aliens and aliens' attorneys as to their or their clients' means and intention to depart. Immigration judges have the discretion to accept oral testimony, but we could not confirm whether means and intention to depart had been adequately established in our sample cases because of the lack of corroborating evidence in EOIR and INS case files.

Immigration judges could exercise their discretion to ask aliens to provide more specific evidence to satisfy these requirements, especially those at the conclusion of removal proceedings. Written or oral testimony from neighbors, employers, teachers, or church and civic groups could bolster a good moral character claim. Aliens could show their means and intention to depart by bringing to court bank statements, pay stubs, one-way tickets, and required travel documents. Documentation in the form of bank statements, bills, or other mail could be used to demonstrate one year's presence in the United States. We found very little evidence of this kind in our review of EOIR case files.

In light of the convicted criminals in our sample who received voluntary departure from immigration judges, judges may wish to consider using the good moral character clause to prevent illegal aliens who have been convicted of multiple misdemeanors or charged with non-aggravated felony crimes from receiving voluntary departure. Although this clause applies only at the conclusion of removal proceedings, it provides immigration judges with a means to order the removal of aliens who have broken U.S. laws.

INS CANNOT VERIFY MOST DEPARTURES ORDERED BY IMMIGRATION JUDGES

Although many illegal aliens granted voluntary departure by immigration judges appear to remain in the United States rather than leaving when required, INS cannot verify which aliens have left and which have not. This is significant because of statutory penalties for violating voluntary departure orders and the 3- and 10-year bars against legal re-entry. Without complete and accurate departure information, INS cannot enforce these legal requirements.

Many Aliens Granted Voluntary Departure by Immigration Judges Appear Not to Leave

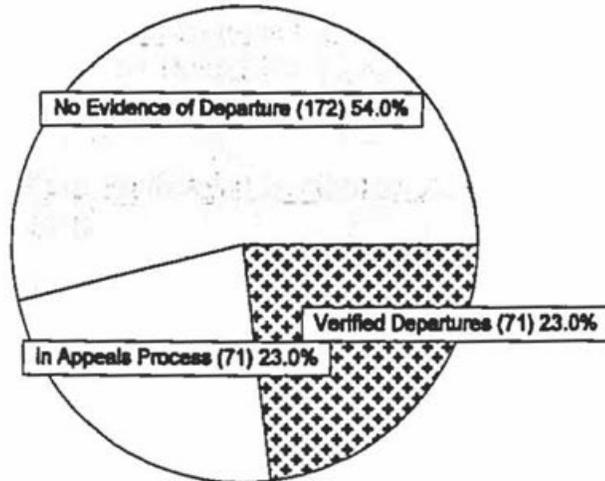
In our sample of 440 aliens in removal proceedings from our four site visits, we found that immigration judges granted voluntary departure in 334 (76 percent) of the cases in which it was requested.¹⁷ At the time of our review, the voluntary departure date had passed for 314 aliens in our sample.¹⁸ As Figure 4 demonstrates, we found no evidence of departure in 54 percent of the cases.¹⁹

¹⁷ In 39 (9 percent) of the cases we reviewed, immigration judges denied voluntary departure requests and ordered the alien removed. In another 44 cases (10 percent), immigration judges granted asylum or some other form of relief; the judges terminated proceedings in 23 cases (5 percent).

¹⁸ As of the date we reviewed the alien files, 20 of the 334 aliens granted voluntary departure were not yet required to leave under their voluntary departure order.

¹⁹ We counted as "verified departures" only those cases in which we found in the INS alien file official documentation that the alien had departed the United States. We accepted as official documentation INS Verification of Departure forms (G-148s) signed and dated by U.S. consular officials, INS Warrants of Removal (I-205s) signed and dated by INS district officers, or any other signed and dated document (i.e., the I-94 Arrival/Departure Record) in which an INS officer or U.S. consular official claimed to have witnessed the alien depart the United States or witnessed the alien's presence in the alien's country of origin.

Figure 4. Departure Status of Cases



Source: *OIG Sample of INS Alien Files (n=314)*

Voluntary departure granted by immigration judges should result in many illegal aliens leaving the country voluntarily and unescorted. Of the 71 (23 percent) verified departures in our review, only 42 (13 percent) of the 314 illegal aliens actually left the country voluntarily and unescorted. These 42 aliens represented 59 percent of the 71 cases of verified departures. The remaining 29 illegal aliens with verified departures were detained during the removal proceedings and eventually were escorted by INS district officers out of the country after the issuance of the immigration judge's voluntary departure order.²⁰

Twenty-three percent of the aliens granted voluntary departure did not leave by the date ordered because they had filed an appeal with the Board of Immigration Appeals (BIA). Aliens who have been denied asylum, as well as some other forms of

²⁰ Aliens can be detained by INS during removal proceedings if they are known to have committed a crime; in some cases, aliens who have been incarcerated in jails are placed into removal proceedings when they near the end of their sentence. In removal proceedings, detained aliens may request any form of relief, including voluntary departure, for which they may be eligible. Aliens are still considered to have received a form of "voluntary" departure even if they have been detained during the removal proceedings and are escorted out of the country by INS district officers after the issuance of the immigration judge's order.

relief, may appeal the immigration judge's decision to the BIA.²¹ The appeals process can be time-consuming. From the receipt of the appeal to the issuance of a decision, the BIA takes an average of seven to eight months to review a detained case and nearly one year to review a non-detained case.²² Aliens granted voluntary departure at the conclusion of removal proceedings do have the right to file an appeal. The appeals process allows aliens to remain in the United States, sometimes for years, without the threat of INS apprehension.

INS Lacks an Effective Departure Verification System for Aliens Granted Voluntary Departure by Immigration Judges

INS does not know which illegal aliens granted voluntary departure by immigration judges have left the United States because the process for verifying departures is flawed. Immigration judges and INS trial attorneys are not required to provide information or instructions to aliens about how to verify their departure, nor did we witness them do so in our courtroom observations. In most cases, INS has no further contact with the alien after the immigration judge issues the voluntary departure order. Aliens are not required to contact INS at the time of their departure or after they return to their country of origin.

Departure verification of aliens granted voluntary departure by immigration judges is not systematic. If an alien entered the United States legally as a non-immigrant, the alien's Non-Immigrant Arrival/Departure Record (I-94) can serve as a verification of departure. However, many aliens in removal proceedings did not enter the country legally, and so would not have received a Non-Immigrant Arrival/Departure form. Even if an alien did enter legally and receive this form, an INS officer or airline carrier would need to return the completed form to the appropriate INS office for this information to serve as departure verification.

Another means of verifying departure is the INS Verification of Departure form (G-146), which aliens can obtain from an INS district office and take to the U.S.

²¹The BIA's 16 members sit in Falls Church, Virginia, and hear appeals of immigration judge decisions from around the country. Most appeals are not conducted orally, but through the BIA's reading of the merits hearing transcript and the briefs filed by the alien's attorney and the INS trial attorney. An alien who has been denied asylum by an immigration judge has the right to appeal the decision, and little reason not to do so. When an immigration judge denies a request for asylum, he or she may grant the alien voluntary departure. But if the alien then appeals the immigration judge's decision to deny asylum, the alien is not required to leave by the voluntary departure date. Even if the BIA upholds the immigration judge's denial of asylum, the BIA may reinstate a period of voluntary departure for the alien.

²²The BIA processes detained cases more quickly because of the cost to the U.S. government of keeping these aliens in INS custody during the appeals process and because INS faces a shortage of detention space in some parts of the country.

Consulate in their native country. There, a consular official must sign the form and attach a picture of the alien to verify that he or she has departed. The consular office is then responsible for sending the completed form back to the INS district office. During our observations of removal proceedings, however, immigration judges did not inform aliens that they could obtain this form to verify their departure. Officials at the Vera Institute of Justice, a non-profit organization currently conducting a demonstration project for INS in New York, maintained that most of the aliens they have worked with had no knowledge of this form.²³ Furthermore, aliens have little incentive to comply with this burdensome procedure.

It is important for INS to have an effective departure verification process. In IIRIRA, Congress prohibited voluntary departure violators from receiving certain forms of relief, including another voluntary departure grant, for 10 years, and further mandated 3-year and 10-year bars against reentry for aliens who have spent time illegally in the United States. INS cannot enforce these new congressional requirements without accurate information on aliens' immigration histories, including whether or not they departed when required and how long they remained in the United States. In addition, because violating a voluntary departure order should preclude aliens from receiving many immigration benefits, accurate departure information is important in processing benefit applications.

²³In September of 1996, the Vera Institute of Justice was awarded a three-year, \$6.4 million contract with INS to implement a demonstration project in the New York district. The Appearance Assistance Program (AAP) seeks to improve the attendance of aliens at their EOIR removal proceedings hearings and to encourage compliance with immigration judge orders. As of April 1998, Vera officials reported that 250 aliens were participating in the AAP; the project's authorization allows a maximum of 340 participants. AAP officials stated that the process of obtaining a verification of departure at the U.S. Consulate is burdensome to the alien, and that aliens have little incentive to comply with the procedure. One AAP official told us that she had traveled to Mexico City to observe the verification process at the U.S. Consulate there. She observed that Mexican nationals must have two forms of identification to enter the Consulate building, one to leave at the gate, and another to bring into the building to present with the Verification of Departure form. She maintained that many Mexicans who are returning to the country after illegal status in the United States will not have the required two forms of identification.

ENFORCEMENT OF IMMIGRATION JUDGES' VOLUNTARY DEPARTURE ORDERS IS INEFFECTIVE

INS enforcement of voluntary departure orders issued by immigration judges is minimal. INS district officers seldom seek or apprehend aliens who violate voluntary departure orders issued by immigration judges. At the same time, immigration judges do not fully utilize voluntary departure bonds or conditions to assist INS in the enforcement of their voluntary departure orders.

INS Does Not Effectively Enforce Voluntary Departure Orders by Immigration Judges

INS is responsible for enforcing the voluntary departure orders issued by immigration judges. In the past, INS has had problems enforcing immigration judges' removal orders. A March 1996 OIG Inspections report entitled Immigration and Naturalization Service Deportation of Aliens After Final Orders Have Been Issued, number I-96-03, examined INS enforcement of immigration judge removal orders. According to that review, only about 11 percent of nondetained aliens ordered removed actually left the United States.²⁴

INS places a higher priority on, and devotes more resources to, enforcing violations of removal orders by criminal aliens and aliens previously ordered removed. INS enforcement of immigration judge-granted voluntary departures varies by district and by enforcement officer. INS headquarters officials report that voluntary departure orders with bonds receive enforcement priority over those without bonds. Nevertheless, illegal aliens who violate their voluntary departure orders represent part of INS's enforcement caseload.

Ideally, INS district officers would need to take four crucial steps to improve their enforcement of immigration judges' voluntary departure orders. First, INS district officers would need to track when an individual alien's voluntary departure date has arrived. Second, INS district officers would need to verify whether or not the alien has in fact departed by that date. Third, INS district officers would need to issue a Warrant of Removal (form I-205) when they have determined that an alien has not left by the time specified.²⁵ In our review of aliens who were granted voluntary departure, we found warrants in the files of only 51 (30 percent) of the 172 cases in which an alien appeared

²⁴This statistic is based on a sample of 1,058 cases from 14 locations in fiscal year 1994. The Inspections team also found that when aliens were detained during the deportation proceedings, they did leave.

²⁵8 CFR § 241.1 and 241.2 require that district directors issue Warrants of Removal (I-205s) when they determine that aliens have not departed within the time period specified for voluntary departure.

to have violated an immigration judge's order. Finally, INS district officers would need to seek and apprehend aliens who have not left by the date of an immigration judge's voluntary departure order.

INS enforcement of immigration judge-ordered voluntary departure is difficult because INS officials do not have sustained contact with the aliens. After the judge's decision, the alien may appear at the INS district office to post a bond or to receive a verification of departure form. Beyond this, however, there is no requirement for the alien to contact INS. When INS believes that an alien has remained in the United States beyond the ordered voluntary departure date, INS district officers must rely on the last address given by the alien. If an alien wishes to remain in the United States beyond the voluntary departure date, the alien can easily avoid INS detection by changing addresses.

Congress sought to help INS enforce voluntary departure orders by including in IIRIRA a provision authorizing civil penalties between \$1,000 and \$5,000 for aliens who fail to follow their voluntary departure orders. This penalty, if consistently enforced, was designed as an incentive for aliens to depart as ordered and to assist INS in its enforcement mission. According to the INS General Counsel, INS headquarters has not taken steps to enforce this provision of the law.

Voluntary Departure Bonds are Not Fully Utilized by Immigration Judges

Officials at EOIR headquarters and the immigration judges frequently note that they are dependent on INS for the enforcement of their orders. While INS has the responsibility for carrying out removal orders, the immigration judges can assist INS in enforcing their orders. Prior to IIRIRA, immigration judges had the discretion to authorize bonds to assist enforcement of voluntary departure orders. Under IIRIRA, the judges are required to set bonds on voluntary departure orders issued at the conclusion of removal proceedings. The Code of Federal Regulations directs that the voluntary departure bond should be set in an amount necessary to ensure departure, but not less than \$500.²⁶

We tested the extent to which immigration judges were setting voluntary departure bonds both pre- and post-IIRIRA. Overall, we found that in both cases bonds are

²⁶ 8 CFR § 240.26 (c)(3) contains this requirement. The regulation also states that the alien shall post the voluntary departure bond with the district director within five business days of the immigration judge's order and that the district director may hold the alien in custody until the posting of the bond. If the alien does not post the bond within five business days, the voluntary departure order shall vacate automatically and an alternate order of removal will take effect on the following day. The CFR further states that in order for the bond to be canceled, the alien must provide proof of departure to the district director.

underutilized. In our sample of cases pre-IIRIRA, we found that a bond was posted in only 1 of the 225 cases in which voluntary departure was granted. For post-IIRIRA cases, immigration judges attached voluntary departure bonds to only 15 of their 109 voluntary departure orders. The post-IIRIRA data shows that immigration judges are not yet using the full authority given them by IIRIRA to strengthen the enforcement of their voluntary departure orders through bonds. We believe this is an early alert to EOIR to ensure that immigration judges are setting voluntary departure bonds.

Reasons immigration judges cited for not requiring voluntary departure bonds included the belief that many aliens cannot afford bonds, the difficulty that aliens face in posting bonds at INS, and a lack of INS detention space which makes bond enforcement difficult. Another reason cited is that voluntary departure bonds cancel any appearance bonds placed on aliens at the time of apprehension. Appearance bonds are usually much higher than voluntary departure bonds. For example, the appearance bonds in our sample ranged from \$1,000 to \$20,000. From an enforcement perspective, there may be little incentive for the immigration judges to replace a high dollar value appearance bond with a \$500 voluntary departure bond.

Immigration Judges Do Not Attach Other Conditions

The post-IIRIRA regulations explicitly authorize immigration judges to attach to their voluntary departure orders any other conditions they deem necessary to ensure departure.²⁷ Based on our file review of aliens granted voluntary departure, we saw no evidence that immigration judges attached any conditions other than bonds to voluntary departure orders, either pre-IIRIRA or post-IIRIRA.

Conditions immigration judges could attach to voluntary departure orders include detention, departure bonds for voluntary departure grants made prior to the conclusion of removal proceedings, and periodic reporting to the INS district office. Immigration judges could order aliens to depart through a land, air, or sea port of entry and report to an immigration officer to have their departure witnessed. Given our finding that aliens granted voluntary departure do not appear to leave, immigration judges should exercise their authority in attaching conditions to voluntary departure orders to help ensure that aliens depart when required.

²⁷ 8 CFR 240.26 (c)(3) contains this authorization.

INS FAILS TO TRACK VOLUNTARY DEPARTURES GRANTED BY INS DISTRICT OFFICERS

INS recordkeeping for voluntary departures granted by INS district officers is seriously flawed. Even though INS cannot document the departure of many of the aliens, INS headquarters and district officials maintain that illegal aliens granted voluntary departure by INS district officers are escorted out of the United States and do not leave INS custody during the departure process. We were unable to find documentation of departure for many of the aliens in our review of INS-granted voluntary departure cases. INS's failure to document these voluntary departures results in an incomplete immigration history for each of those illegal aliens. INS district officers or other law enforcement officials need to have access to complete immigration histories for each illegal alien they encounter in order to make appropriate decisions about the alien's disposition and the enforcement of various immigration penalties, such as the 3- and 10-year bars for illegal presence.

In addition, steps INS has taken recently to track voluntary departures granted by INS district officers have not been effective. The former INS General Counsel testified before a congressional committee in September 1996 that INS has not historically tracked voluntary departures granted by INS district officers. He stated that INS was developing a comprehensive tracking system to provide a complete, timely count of all INS-granted voluntary departures. We found that the system, the Interior Voluntary Return Tracking System (IVRTS) that INS implemented in fiscal year 1997, does not track individual aliens who are granted voluntary departure by INS district officers and can offer only an incomplete count of those grants nationwide.

The Interior Voluntary Return Tracking System Does Not Track Individual Aliens

In October 1996, INS established a system intended to track and count voluntary departures granted by INS district officers. Each month, INS requires all districts and Border Patrol sectors to send the Records of Deportable Alien for all voluntary departures granted by INS district officers to the INS Service Center in Dallas, Texas, to be entered into IVRTS. Contractor data-entry workers key the information from the Records of Deportable Alien into IVRTS to generate monthly and yearly statistics. For fiscal year 1997, IVRTS reported that INS district officers granted 68,000 voluntary departures. INS headquarters officials, however, believe that not all districts and sectors

sent their Records of Deportable Alien to Dallas. Consequently, INS maintains that the figure is too low by at least 20,000.²⁸

The "tracking system" is flawed in more systemic ways as well. First, it only purports to count the number of grants of voluntary departure. For all of the reasons described above, there is substantial reason to doubt its reliability as a record of actual departures. Second, under the terms of the contract, the IVRTS contractor does not record the names or alien numbers of the aliens granted voluntary departure. Therefore, the system is incapable of tracking individual aliens. As currently deployed, IVRTS can only offer an incomplete count of the number of aliens granted voluntary departure by INS district officers. It provides no information suitable for follow-up enforcement and none useful for lookout indices. INS should either improve the accuracy and expand the capabilities of IVRTS or discontinue the system.

The Deportable Alien Control System Does Not Provide Accurate Departure Information for INS-Granted Voluntary Departures

The DACS, INS's automated data base that theoretically includes records on every deportable alien encountered in the United States, offers little help in tracking INS-granted voluntary departures.²⁹ DACS records must be called up with alien numbers. However, INS district officers do not assign alien numbers to many of the aliens they allow to voluntarily depart. Of the 708 Records of Deportable Alien forms we collected, 226 had alien numbers. We checked DACS for departure records for those 226, and found a DACS record for 153 cases. In 123 of those 153 cases, DACS records provided a verification of the alien's departure.³⁰

²⁸ Officials at INS headquarters did not know why INS districts and Border Patrol sectors failed to send more than 20,000 Records of Deportable Alien to the INS Service Center in Dallas, TX. INS estimates that the IVRTS figure for fiscal year 1997 is too low by subtracting the number of charging documents for removal proceedings issued from the number of apprehensions of aliens who have been in the United States 72 hours or more. By this method, the figure should be 90,000.

²⁹ INS district officers use DACS to find a variety of information about an alien and his or her immigration history. DACS includes biographic details, employment information, case histories, detention records, information on EOIR hearings, and departure records.

³⁰ We accepted a DACS record as verification of departure only if a 9, the DACS code for a voluntary return witnessed by an INS officer, appeared in the "Depart-Cleared-Stat" field of the case closure screen. We did not count the voluntary departure as verified if the date of the departure in DACS was too far removed from the date of apprehension on the Record of Deportable Alien; in such cases, the departure in DACS most likely represented a subsequent voluntary departure.

Therefore, DACS could only provide verification for 123 (17 percent) of 708 voluntary departures. Officials at INS headquarters told us that DACS contains numerous errors and is too inconsistently maintained to be relied upon for accurate departure information.

Paper Transportation Logs Do Not Provide Adequate Verification of Departures

Comparing our 708 INS-granted voluntary departure cases with the Records of Persons and Property Transferred (I-216s) that INS uses as paper transportation logs, we could verify the departure of 398 (56 percent) of the aliens.³¹ Although the purpose of the Record of Person and Property Transferred form is not to verify departures, we attempted to use the paper transportation logs as another means of tracking the departure of the aliens in our sample. INS may, in fact, remove more of the voluntary departures than we could verify by matching the Records of Deportable Aliens to the Records of Persons and Property Transferred. However, INS does a poor job of documenting the transportation of illegal aliens in its custody, making the tracking of individual aliens virtually impossible.

³¹In a small percentage of these cases (approximately 5 percent), the aliens we counted as verified departures were transported to a detention center or a Service Processing Center and not to their native countries. Our assumption was that, once these aliens arrived at the detention center or the Service Processing Center, they were subsequently returned to their native countries under the escort of an INS officer.

RECOMMENDATIONS

Our inspection found instances of apprehended illegal aliens who, despite their convictions for aggravated felony crimes, received voluntary departure from immigration judges and INS district officers. Because voluntary departure carries no penalty or impediment to legal re-entry, these aliens could re-enter the United States legally and, potentially, commit additional crimes. Some of them may have violated their voluntary departure orders and never returned to their native countries. Instead of receiving the benefits of voluntary departure, these aggravated felons should have been immediately detained and removed from the country. Voluntary departure provides an alternative to a formal order of removal for eligible illegal aliens to leave the country through a streamlined, quicker, and less stigmatized process while potentially saving the U.S. Government detention and removal costs. Since criminal history checks are not always performed by INS nor introduced as evidence in removal proceedings, some aggravated felons are inappropriately granted voluntary departure. If implemented properly, voluntary departure should not serve as a mechanism for aggravated felons to escape formal removal and concomitant penalties.

In addition, INS does not ensure that illegal aliens granted voluntary departure by immigration judges leave the country within the required time frame. INS enforcement of voluntary departure orders is minimal, while EOIR immigration judges do not use their full authority to assist INS in the enforcement of their orders. Furthermore, INS record keeping does not adequately track whether illegal aliens granted voluntary departure actually leave the United States. To be effective, voluntary departure should have a sound departure verification and tracking system. INS's lack of knowledge about whether illegal aliens leave the country precludes INS from determining if voluntary departure provides a streamlined, quicker process than formal removal that saves the U.S. Government detention and removal costs.

Our recommendations specifically address problems with enforcement of voluntary departure, but we recognize that voluntary departure is only one method INS employs to remove illegal aliens from the United States. Some of the same enforcement and tracking problems identified for the voluntary departure process are evident in the process INS uses to track and enforce the departure of illegal aliens formally removed from the United States. A September 1997 OIG report, INS Monitoring of Nonimmigrant Overstays, number I-97-08, identified similar problems in INS's tracking of nonimmigrants who overstay their visas. INS may benefit from considering the broader applicability of our recommendations on voluntary departure as part of its efforts to improve overall tracking and enforcement.

We offer the following recommendations to strengthen voluntary departure and address the problems identified in this report. We address our recommendations to INS and EOIR because both have important roles in the successful implementation of voluntary departure as an alternative form of removal.

To ensure that criminal history checks are consistently completed when the alien is apprehended and to ensure that the results of the checks are used in removal proceedings by immigration judges, the Inspections Division recommends:

- 1. The INS Commissioner require that INS district officers perform NCIC criminal history checks before granting voluntary departure to apprehended aliens, or placing aliens into EOIR removal proceedings. This requirement should include the development and issuance of policies and procedures with specific guidance for district officers on their responsibilities and a mechanism for monitoring compliance.*
- 2. The INS Commissioner require that INS trial attorneys introduce up-to-date (within three months) results of NCIC criminal history checks as evidence in EOIR removal proceedings. District counsels should ensure that new checks are performed within three months of an alien's appearance before an immigration judge each time the alien is scheduled to appear in immigration court.*
- 3. The EOIR Director seek regulatory change that voluntary departure cannot be granted by immigration judges if the results of up-to-date NCIC criminal history checks have not been introduced as evidence. In the interim period until the regulatory change takes effect, the EOIR Director should issue guidance suggesting that immigration judges not grant voluntary departure without criminal history checks.*

In light of the OIG finding that many aliens granted voluntary departure by immigration judges appear not to leave and to ensure that all eligibility requirements are consistently applied by immigration judges, the Inspections Division recommends:

- 4. The EOIR Director issue guidance suggesting that immigration judges have aliens and their attorneys present evidence to corroborate oral testimony on eligibility.*

To improve tracking the departure of all aliens ordered to voluntarily leave the country, the Inspections Division recommends:

5. The INS Commissioner implement an effective departure verification system for immigration judge-granted voluntary departures and a system for identifying and tracking each alien granted voluntary departure by INS district officers. INS could choose to create one system, or enhance an existing system, for tracking immigration judge granted-voluntary departures and INS granted-voluntary departures. In either case, any system must present a clear trail from the alien's apprehension through his or her departure from the United States.

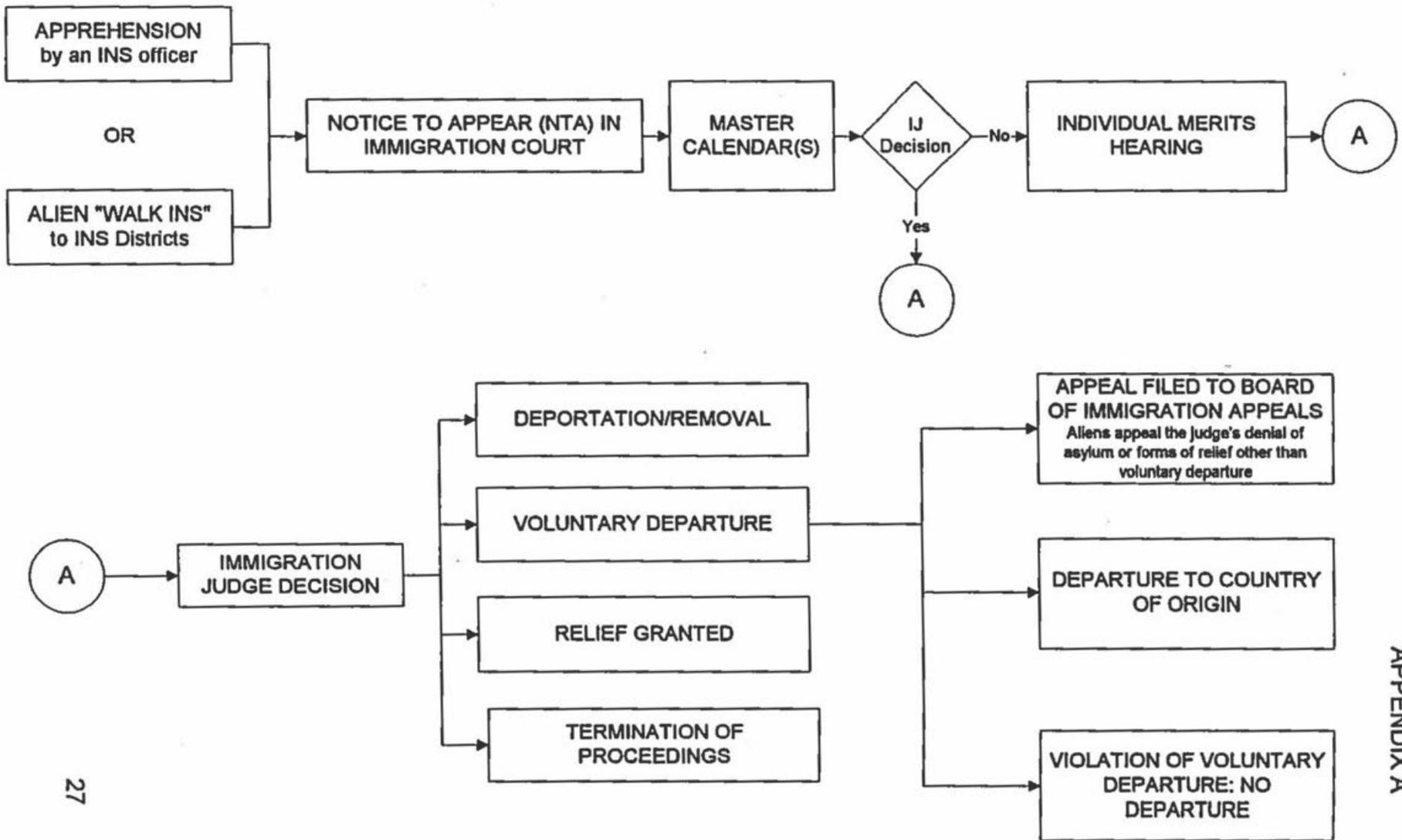
6. The EOIR Director, once INS establishes a departure verification system, require immigration judges to provide information and instructions, including any applicable forms, to aliens on how to verify their departure. If regulatory change is needed to implement this recommendation, the EOIR Director should seek the regulatory change.

To ensure that aliens ordered to leave actually do so, the Inspections Division recommends:

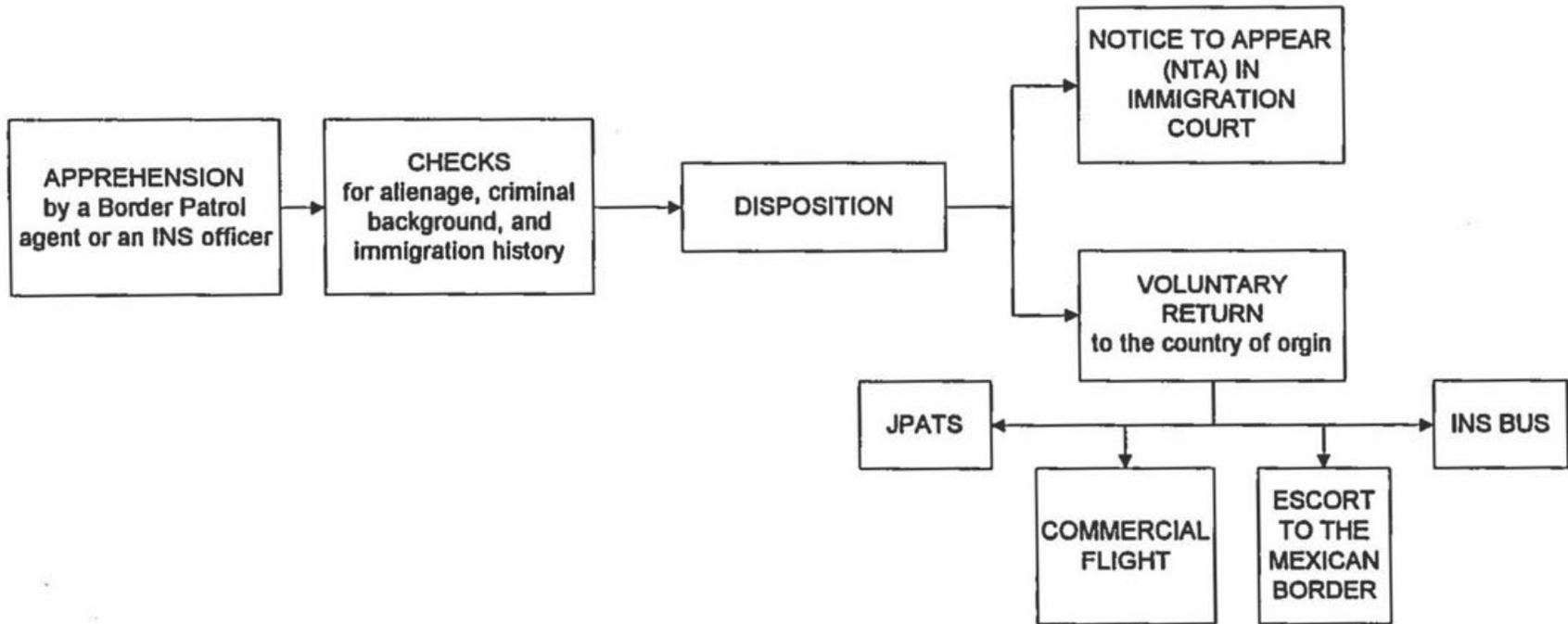
7. The INS Commissioner develop an enforcement plan addressing those aliens who have violated immigration judge-granted voluntary departure orders that, at a minimum, includes the following issues: 1) coordination with EOIR in monitoring departure dates, 2) verifying departures, 3) prompt issuance of Warrants of Removal, 4) entering violators into INS lookout systems, and 5) seeking and apprehending violators. INS could consider revising its current enforcement plan to address these issues.

8. The EOIR Director provide clarifying guidance that immigration judges should set voluntary departure bonds whenever possible to assist INS in enforcing their voluntary departure orders.

THE EOIR REMOVAL PROCEEDINGS PROCESS



THE INS VOLUNTARY DEPARTURE PROCESS



METHODOLOGY

We reviewed the implementation of voluntary departure by INS district officials and EOIR immigration judges. We interviewed officials at INS headquarters in Washington, D.C., including the General Counsel, the Executive Associate Commissioner for Policy and Planning, and senior level officials in the Programs and Information Resources Management offices. At EOIR headquarters in Falls Church, Virginia, we interviewed senior officials including the General Counsel, the Chief Immigration Judge, and the Chief Attorney Examiner for the Board of Immigration Appeals.

In selecting sites to visit for this inspection, we used EOIR caseload and INS apprehension data to identify locations in which there were significant numbers of both EOIR removal proceedings cases and voluntary departures granted by INS district officers. The four districts we chose, Los Angeles, CA, San Francisco, CA, New York, NY, and Washington, D.C., were among the locations with the highest EOIR workload during fiscal year 1997, and all but Washington, D.C., also had large numbers of INS apprehensions. Taken together, the four districts we visited represented 28 percent of the EOIR removal cases in which the alien requested voluntary departure for fiscal year 1997, and 32 percent of all fiscal year 1997 apprehensions by INS district officers.

In March and April of 1998, we conducted field site visits of both INS and EOIR in each of the four districts we selected.³² At the four INS districts, we interviewed district directors; assistant district directors for investigations, detention and deportation, and examinations; and district counsels and trial attorneys. At the EOIR courts in each of the four districts, we interviewed immigration judges and court administrators and observed removal proceedings.

In addition to our interviews and site visits, we used three different data sets from INS headquarters and the four district offices to assess the implementation of voluntary departure. It was necessary to utilize different data sets to answer all of our researchable questions. Each data set is described below.

To test whether aliens were eligible for voluntary departure (e.g., criminal history checks) and whether aliens granted voluntary departure by immigration judges actually leave the United States, we took four samples from an EOIR data base of 82,486 removal proceedings cases. These samples, randomly selected from each of our four field site locations, consisted of 440 aliens in removal proceedings who had requested voluntary departure between October 1, 1996, and December 15, 1997. Out of the

³²We conducted a preliminary field site visit in Baltimore, MD in February of 1998 to test our methods, but we did not use any of the data we collected in Baltimore, MD in the statistics in this report.

440 cases in these samples, 334 aliens were granted voluntary departure by immigration judges. These samples had precision rates of plus or minus 5 percent, confidence levels of 95 percent, and estimated error rates not to exceed 10 percent.

For the 334 cases, at our four field sites, we reviewed the INS alien files and EOIR case files. We examined the files for documentation of criminal and other eligibility checks by INS and EOIR personnel and evidence of the aliens' departure from the United States. We also entered the aliens in these samples into INS's Deportable Alien Control System (DACS), Central Index System (CIS), and Non-Immigrant Information System (NIIS) data bases to check for any further information on eligibility and departure.

In order to determine whether or not immigration judges grant voluntary departure to convicted criminals, we selected a random sample of 343 voluntary departure grants from the national EOIR data base. These cases were selected from the third and fourth quarters of fiscal year 1997. This sample had a precision rate of plus or minus 3 percent, a confidence level of 95 percent, and an estimated error rate not to exceed 10 percent. We checked this sample against the records of the FBI's National Crime Information Center (NCIC) data base in order to determine if aliens with criminal histories had been granted voluntary departure.³³ We also entered this sample into the INS data bases DACS, CIS, and NIIS to search for further information.

Finally, we tested whether or not INS could document that aliens granted voluntary departure by INS district officers were actually removed. At the four INS district offices we visited, we requested the Record of Deportable Alien forms (the I-213s) and the Record of Persons and Property Transferred forms, or INS's paper transportation log, (the I-216s) for the months of October 1997 and February 1998. From the four districts, we received a total of 708 Record of Deportable Alien forms. By comparing the two forms, we sought to verify that INS district officers escorted out of the United States the aliens granted voluntary departure in each district in those months. We checked those Record of Deportable Alien forms for which we had alien numbers in DACS for additional removal verification. We also used this sample to test for evidence of eligibility checks. The Record of Deportable Alien form includes blocks for the apprehending officer to check noting that he or she has performed criminal checks. In addition, we tested a portion of this sample against NCIC to determine whether these aliens had any criminal history.

Scope

We did not review voluntary departures granted by Border Patrol agents, although we relied upon the findings of two 1998 Office of the Inspector General, Inspections Division reports about Border Patrol operations, Border Patrol Drug Interdiction Activities

³³In NCIC, we checked the Interstate Identification Index and the Wanted Persons file for each case. For Hispanic dual last names, we reversed the order of the names and checked each name individually.

on the Southwest Border, number I-98-20 issued in September, and Review of the Immigration and Naturalization Service's Automated Biometric Identification System (IDENT), number I-98-10, issued in March.

We did not report on the requirement that an alien must never have engaged in terrorist activity in our consideration of eligibility criteria. While the ability of INS district officers to check aliens' terrorist backgrounds is a serious concern and worthy of further study, we did not address this issue in this report.

Initially, we intended to compare pre-IIRIRA (old law) and post-IIRIRA (new law) implementation but decided not to pursue this analysis so early in the implementation of the new law. For this reason, our four samples from the four field site locations (a total of 440 cases) do consist of both old law cases (307 cases or 70 percent of the total) and new law cases (133 cases or 30 percent of the total). However, we have sufficiently analyzed each finding to ensure that this does not have an impact on any of our conclusions nor our characterization of the state of implementation of voluntary departure. Where such a distinction is necessary to understand the finding or important in making a point, we have noted so in the text. The other sample of 343 cases taken from the EOIR database are all post-IIRIRA (new law) cases.

THE INS DEFINITION OF AGGRAVATED FELONY

The Immigration and Nationality Act, in section 101(a)(43), 8 U.S.C. 1101(a)(43) defines aggravated felonies to include:

- murder;
- rape;
- sexual abuse of a minor;
- any drug trafficking crime as defined in 18 U.S.C. 924(c)(2);
- illicit trafficking in any firearms or destructive devices as defined in 18 U.S.C. 92 or in explosive materials as defined in section 841(c) of that title;
- laundering of monetary instruments as defined in 18 U.S.C. section 1956 or engaging in monetary transactions in property, as defined in section 1957 of that title, derived from specific unlawful activity if the amount of the funds exceeded \$10,000;
- explosive materials offenses as described in 18 U.S.C. section 842(h) or (i) or section 844 (d), (e), (f), (g), (h), or (i);
- firearms offenses as described in 18 U.S.C. section 922(g) (1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r) or section 924 (b) or (h);
- firearms offenses described in section 5861 of the Internal Revenue Code of 1986; crimes of violence, as defined 18 U.S.C. section 16 (but not including purely political offenses), for which the term of imprisonment was at least one year;
- theft offenses, including the receipt of stolen property, or burglary offenses for which the term of imprisonment was at least one year; offenses relating to the demand or receipt of ransom as described in 18 U.S.C. section 875,876,877, or 1202;
- offenses relating to child pornography as described in 18 U.S.C. section 2251,2251a, or 2252;
- offenses described in 18 U.S.C. section 1962 (relating to racketeer-influenced corrupt organizations), or offenses described in section 1084 (if it is the second or subsequent offense) or 1955 of that title (relating to gambling offenses), for which a sentence of one year imprisonment or more may be imposed;
- offenses relating to the owning, controlling, managing, or supervising of prostitution business;
- offenses relating to transportation for the purpose of prostitution if committed for commercial advantage, as described in 18 U.S.C. section 2421, 2422, or 2423; offenses relating to peonage, slavery, and involuntary servitude as described in 18 U.S.C. 1581, 1582, 1583, 1584, 1585, or 1588;
- offenses related to gathering or transmitting national defense information, the disclosure of classified information, sabotage, or treason, as described in 18 U.S.C. sections 793, 798, 2153, 2381, and 2382;

- offenses relating to protecting the identity of undercover intelligence agents, as described in section 601 of the National Security Act of 1947 (50 U.S.C. 421);
- offenses relating to protecting the identity of undercover agents, as described in section 601 of the National Security Act of 1947;
- offenses involving fraud or deceit in which the loss to the victim exceeds \$10,000; offenses described in section 7201 of the Internal Revenue Code of 1986 in which the loss to the government exceeds \$10,000;
- offenses related to alien smuggling, except in the case of a first offense which was committed for the purpose of assisting, abetting, or aiding a spouse, child, or parent;
- offenses relating to falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of 18 U.S.C. section 1543, or is described in section 1546(a) of that title and for which the term of imprisonment is at least 12 months, except in the case of a first offense committed for the purpose of assisting, abetting, or aiding a spouse, child, or parent;
- offenses relating to failure to appear by a defendant for service of sentence if the underlying offense is punishable by imprisonment for a term of five years or more;
- offenses relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which the term of imprisonment is at least one year;
- offenses relating to obstruction of justice, perjury, or subornation of perjury, or bribery of a witness, for which the term of imprisonment is at least one year;
- offenses relating to failure to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony for which a sentence of two years' imprisonment or more may be imposed;
- an attempt or conspiracy to commit any of the above described offenses; and
- foreign convictions for crimes which would be defined as aggravated felonies if committed in the United States and for which the term of imprisonment was completed within the previous 15 years.

Appendix E

**The Executive Office of Immigration Review's Comments on the
Office of the Inspector General's Report "Voluntary Departure: Ineffective
Enforcement and Lack of Sufficient Controls Hamper the Process"
Report Number I-99-09**



U. S. Department of Justice

Executive Office for Immigration Review

Office of the Director

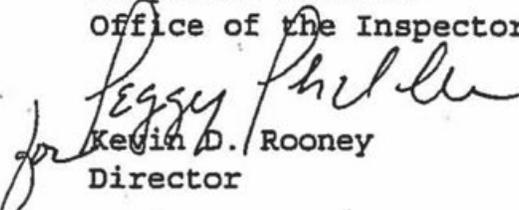
Director

5107 Leesburg Pike, Suite 2400

Falls Church, Virginia 22041

March 10, 1999

MEMORANDUM TO: Michael R. Bromwich
Inspector General
Office of the Inspector General

FROM: 
Kevin D. Rooney
Director

SUBJECT: Comments on the Office of the Inspector General's
report entitled "Voluntary Departure: Ineffective
Enforcement and Lack of Sufficient Controls Hamper
the Process" Report Number A-97-26

The Executive Office for Immigration Review (EOIR) would like to thank the Office of the Inspector General (OIG) for the opportunity to comment on the above-referenced report, and for the OIG's consideration of our comments to the initial version of the report. The amended draft report has addressed many of our previous concerns.

EOIR is currently reviewing its policies and procedures in the areas where the draft report raises concern and will promptly address those areas to the greatest extent possible within the scope of our authority. Described below are additional comments concerning our role in the area of voluntary departure.

Voluntary Departure

Immigration Judges are responsible for conducting formal administrative proceedings and act independently in their decision-making capacity. Their decisions are administratively final unless appealed or certified to the Board of Immigration

Appeals (BIA), the highest administrative body for interpreting and applying immigration law. This report studies the operation of the voluntary departure process as applied by Immigration Judges and the BIA.

Voluntary departure is a limited benefit granted to eligible aliens as an alternative to an order of deportation or removal. Voluntary departure is not comparable to other forms of relief from removal, such as cancellation of removal or adjustment of status. It cannot result in the award of legal permanent resident status like cancellation of removal or asylum. Furthermore, a grant of voluntary departure converts to an order of removal with all of its attendant consequences after the time specified to depart expires. Accordingly, voluntary departure is an incentive for aliens with no other form of relief available to them to leave the country at their own expense.

Despite its limited value, voluntary departure is not available to every alien. One concern raised in the OIG report is that some aggravated felons are granted voluntary departure despite the fact that aggravated felons are ineligible for voluntary departure. See Draft Report pp.11, 24. In each case where voluntary departure was granted to an ineligible criminal alien, however, there was no evidence in the record indicating that the alien to receive a grant of voluntary departure had a criminal background¹. Consequently, in those instances discovered by OIG in which an aggravated felon received a grant of voluntary departure, the Immigration Judge was acting within his or her authority, and without knowledge of any criminal conviction. Additionally, it is important to note that criminal aliens who have not been convicted of an aggravated felony may be eligible for voluntary departure. Therefore, it may be appropriate to grant voluntary departure to those criminal aliens.

¹ Only the parties introduce evidence into the Record of Proceedings. The Immigration and Naturalization Service (INS) would normally present evidence of a criminal record to the Immigration Judge for his or her consideration.

The Immigration Court's Mission is to Impartially Adjudicate Cases

The Immigration Court's role is to accomplish "the expeditious, fair, and proper resolution of matters coming before [it]." 8 C.F.R. § 3.12 (1998). This requires the Immigration Court to act as a neutral forum in which the opposing parties i.e., the INS and the alien, may present their cases. Immigration Judges then evaluate the charges, facts, and issues of law that are raised by the parties. Neither the Immigration and Nationality Act (INA), nor the regulations, authorize Immigration Judges to independently gather facts or to resolve issues that are not presented to them by either party. Accordingly, each case is decided according to its merit, based on an evaluation of the evidence presented to the Immigration Judge.

In its report, OIG recommends that the Immigration Judge set conditions in addition to voluntary departure bonds, such as requiring an alien to periodically report to the INS, to ensure that an alien will leave within the specified time frame. See Draft Report p. 20. According to the regulations, Immigration Judges "may impose such conditions as he or she deems necessary to ensure the alien's timely departure from the United States." 8 C.F.R. §§ 240.26 (b) (3), (c) (3) (1998). However, Immigration Judges will only attach additional conditions if, in the individual Immigration Judge's discretion, the facts of the case appear to warrant it. Each case must be decided according to its merit.

OIG also recommends requiring additional testimony by other witnesses to corroborate an alien's account that he or she is ready, willing and able to depart voluntarily within the specified time frame. See Draft Report pp. 13, 25. The BIA has found, however, that an alien's testimony, if credible, is by itself sufficient evidence of an alien's willingness and ability to depart². Therefore, it is appropriate to accept an alien's

² Additionally, Federal courts have found that an I-213, Record of Deportable or Admissible Alien, is inherently reliable

assertions of his or her willingness to depart without the need for corroborating testimony from other witnesses.

It is important to remember that, under a grant of voluntary departure, the alien is simply being permitted to arrange and finance his own departure which is a benefit to the government. Accordingly, the benefit of adopting a recommendation to require corroborating testimony is outweighed by the potential for delay and the likelihood of unnecessarily protracted proceedings. Moreover, a grant of voluntary departure converts to an order of removal after the time to depart voluntarily expires, thereby removing the benefit of such a grant from one who fails to timely depart.

The Methodology

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) (Public Law 104-208) substantially amended the INA. Consequently, aliens who were placed in deportation proceedings on or before April 1, 1997, could apply for voluntary departure under pre-IIRIRA procedures. See 8 C.F.R. § 240.49(b); 8 C.F.R. § 240.55; 8 C.F.R. § 240.56. OIG's observations and recommendations are the result of analyzing both pre-IIRIRA and post-IIRIRA cases, which are adjudicated according to different rules. The OIG conclusion that Immigration Judges were not attaching the IIRIRA mandated conditions to grants of voluntary departure was based on a study composed of 70 percent of cases arising under pre-IIRIRA law, where attaching conditions was not mandatory. See Draft Report pp. 19-20. Such a conclusion may not accurately reflect the current practice in Immigration Courts. While OIG acknowledges this fact in the body of its report, the report may still permit a reader to infer mistakenly that the Immigration Judges are not applying the law as written.

and acceptable to use to establish the date of entry. See Trias-Hernandez v. INS, 528 F.2d 366 (9th Cir. 1975). The information listed on the I-213 is obtained from the alien. Testimony and evidence based on the alien's assertions are acceptable according to case law and practice.

Additionally, EOIR is concerned that cancellation of removal/suspension of deportation cases were segregated from other forms of relief without adequate explanation in the reporting of statistics. In several places, "cancellation of removal" is referred to as "cancellation of proceedings" and is incorrectly distinguished from other forms of relief. See Draft Report, p. 3, fn. 6, and p. 14, fn. 17.

"Cancellation of removal" is a "term of art." It is a form of relief that results in legal permanent resident status. It is not equivalent to "termination of proceedings." Therefore, it is unclear if the "other relief" category is composed of reliefs that provide legal permanent resident status, or result in a lesser benefit, similar to a grant of voluntary departure. Accordingly, "Cancellation of removal" needs to be appropriately characterized as a form of relief and then referenced accurately. It should be included in either the category "other relief" or the category "other relief" should list each type of relief in that category.

EOIR RESPONSE TO RECOMMENDATIONS

Recommendation Number 3

The EOIR Director seek regulatory change that voluntary departure cannot be granted by immigration judges if the results of up-to-date NCIC criminal history checks have not been introduced as evidence. In the interim period until the regulatory change takes effect, the EOIR Director should issue guidance suggesting that immigration judges not grant voluntary departure without criminal history checks.

- EOIR will consider NCIC criminal history checks that are offered into evidence by the INS. This procedure is in place for asylum applicants. Please note, however, that implementing this recommendation could result in significant delays in adjudicating cases and has the potential to subject detained aliens to extended periods of incarceration, unless NCIC checks are performed either prior to, or, at the onset of proceedings.

- This recommendation must be effected by regulation.

Recommendation Number 4

The EOIR Director issue guidance suggesting that immigration judges have aliens and their attorney present evidence to corroborate oral testimony on eligibility.

- Credible testimony by the alien is considered sufficient to sustain the alien's burden of proof. This is supported by BIA case law and the prevailing regulations. See 8 C.F.R. § 208.13 (a); See Trias-Hernandez v. INS, 528 F.2d 366 (9th Cir. 1975) (finding that an I-213, Record of Deportable or Admissible Alien, which is completed using the alien's statements is inherently reliable and acceptable to use to establish the date of entry).
- Corroborating testimony concerning willingness and ability to depart may result in significant delay and may not be any more inherently credible than the alien's own testimony. Furthermore, the Immigration Judges are in the best position to determine, on a case-by-case basis, whether additional evidence is necessary.
- EOIR believes issuing guidance is neither permissible, nor desirable.

Recommendation Number 6

The EOIR Director, once INS establishes a departure verification system, require immigration judges to provide information and instructions, including any applicable forms, to aliens on how to verify their departure. If regulatory change is needed to implement this recommendation, the EOIR Director should seek the regulatory change.

- Once a departure verification system is established, the Immigration Court will comply with any regulatory

requirement to provide information or forms to an alien granted voluntary departure.

Recommendation Number 7

The INS Commissioner develop an enforcement plan . . . that includes coordination with EOIR in monitoring departure dates.

- EOIR will work with the INS to assist them in verifying an alien's departure.

Recommendation Number 8

The EOIR Director provide clarifying guidance that immigration judges should set voluntary departure bonds whenever possible to assist INS in enforcing their voluntary departure orders.

- Immigration Judges currently have the authority to attach conditions to a grant of voluntary departure; however, each case must be evaluated according to its own merit. EOIR believes issuing guidance is neither permissible, nor desirable.
- EOIR will continue to provide training to its Immigration Judges including instructing the judges on the procedures for granting voluntary departure and all changes in those procedures since the passage of IIRIRA. All judges entering duty since IIRIRA's passage receive the training on the same issues.

OFFICE OF THE INSPECTOR GENERAL'S ANALYSIS
OF MANAGEMENT'S RESPONSE

On January 15, 1999, the Inspections Division sent copies of the draft report to the Immigration and Naturalization Service (INS) and the Executive Office for Immigration Review (EOIR) requesting written comments on the draft report findings and recommendations.¹ We asked that each component's response include agreement or disagreement with our recommendations, how recommended actions will be carried out, and any time frames for planned actions. In the event that a recommendation cannot be implemented or alternative actions are more appropriate, we requested an explanation in the response.

The Inspections Division did not receive a response to the draft report from INS. Consequently, all four recommendations addressed to INS are unresolved. We will continue to work with INS to elicit their comments and planned actions to meet the recommendations.

The Director of EOIR responded to the draft report by memorandum on March 10, 1999. EOIR stated that it is "currently reviewing its policies and procedures in the areas where the draft report raises concern and will promptly address those areas to the greatest extent possible within the scope of our authority." While this is an important first step in addressing the issues raised in the report, the response does not specifically state whether EOIR intends to implement our specific recommendations and, if not, what alternative courses of action they propose. Because of this, two of the four recommendations are unresolved.

EOIR raised a number of general points in addition to its specific comments on the recommendations. In particular, EOIR discussed the role of immigration judges as independent decision-makers and noted that no evidence is presented in the report indicating that any immigration judge acted outside of his or her authority. We agree. However, while immigration judges are currently following the letter of the law and regulations, we believe they could do more to prevent the problems identified in this report. Currently, immigration judges grant voluntary departure to some ineligible aliens and many aliens granted voluntary departure by immigration judges appear not to leave the United States. Immigration judges are in a unique position to review aliens' criminal histories in court proceedings to ensure that no aggravated felons receive a grant of voluntary departure. We think it is reasonable to expect EOIR immigration

¹As part of our report process, we provided INS and EOIR with preliminary working drafts of our report in November 1998. We then conducted exit conferences with representatives from each component on December 3, 1998, to discuss our findings and recommendations.

judges to do all in their power to help ensure that the intent of the law and regulations are upheld. For example, immigration judges could refuse to grant voluntary departure unless the results of an NCIC criminal history check had been introduced as evidence.

EOIR expressed concern that our sample includes both pre-IIRIRA and post-IIRIRA cases. However, as stated in our methodology appendix, we have analyzed each finding to ensure that this does not affect any of our conclusions. Regarding voluntary departure bonds – the only “mandated condition” required by IIRIRA – we explicitly indicate whether bonds were set in pre-IIRIRA or post-IIRIRA cases (page 20). Therefore, we do not believe our data will lead readers to mistaken inferences.

Based on EOIR's comments, we made minor technical changes in the report to clarify the use of the term cancellation of removal. We would also like to note that we had previously included in the report a footnote defining cancellation of removal based on earlier feedback from EOIR.

Recommendation Number:

3. Unresolved. EOIR's reply was not responsive. Its response did not define the regulatory change that it has told us would be required, did not indicate whether EOIR would act to seek such a change, and did not indicate whether EOIR would adopt the interim measures we suggested or propose alternatives for our consideration. EOIR should clarify its response to address more specifically these issues and to indicate whether it intends to take any action to reduce the instances in which aliens with disqualifying criminal records are granted voluntary departure by immigration judges. We will consider its revised response along with INS's responses to related recommendations, when INS furnishes them.

4. Closed. In light of our finding that many aliens granted voluntary departure appear not to leave, we consider it desirable and within the discretion of immigration judges to request corroborating evidence for oral testimony. EOIR responded that “credible testimony by the alien is considered sufficient to sustain the alien's burden of proof. This is supported by BIA {Board of Immigration Appeals} case law and the prevailing regulations.” Our recommendation was intended as a suggestion that the Director provide guidance to the judges to increase the likelihood that aliens will leave the country once granted voluntary departure. We have decided not to make a formal recommendation on this matter. No further action is required by EOIR.

6. Resolved-Open. We recommended that the EOIR Director, once INS establishes a departure verification system, require immigration judges to provide information and instructions, including any applicable forms, to aliens on how to verify their departure. EOIR responded that they will comply with any regulatory

requirement to provide information or forms to an alien granted voluntary departure.

8. Unresolved. We recommended that the EOIR Director provide clarifying guidance that immigration judges should set voluntary departure bonds to increase the likelihood that aliens will leave the country since our report found that many aliens granted voluntary departure appear not to leave.

EOIR responded that immigration judges must evaluate cases on their own merits, and that it believes that the agency provides sufficient training, including instruction on the procedures for granting voluntary departure, to the judges. However, our findings indicate that, both before and after the passage of IIRIRA, immigration judges rarely set voluntary departure bonds. Immigration judges attached voluntary departure bonds to only 16 out of 334 voluntary departure cases in our sample. We believe that immigration judges would benefit from guidance showing the potential enforcement value of attaching bonds to voluntary departure orders at any time during proceedings.

Please provide clarification as to whether EOIR plans to take any action to meet this recommendation. If EOIR believes that its training of immigration judges is sufficient to meet this recommendation, please provide us with the training materials and information on how frequently this training is conducted.