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Before the House Committee on the Judiciary
Subcommittee on Immigration, Border Security, and Claims
Concerning Interior Immigration Enforcement Resources

Chairman Hostettler, Congresswoman Jackson Lee, and Members of the Subcommittee on Immigration, Border Security, and Claims:

I. INTRODUCTION

I appreciate the opportunity to testify before the Subcommittee as it examines the level of resources dedicated to interior immigration enforcement. I represent the Office of the Inspector General (OIG) at the Department of Justice (DOJ) where, up until March 2003, we were responsible for oversight of the former Immigration and Naturalization Service (INS) until it transferred from the DOJ to the Department of Homeland Security (DHS).

The 2000 census estimated that as many as 8 million unlawful aliens reside in the United States. That total includes individuals who entered the United States without proper documentation and those who entered legally but overstayed or violated their visas or terms of entry.

In 1996 and in 2003, the OIG examined the INS's effectiveness at removing aliens after they had received final orders of removal from the Executive Office for Immigration Review (EOIR).¹ In both reviews, we found that the INS removed more than 90 percent of aliens it detained pending their removal.² However, both reviews also found that the INS was far less effective at apprehending and removing non-detained aliens who had received final orders to leave the country. In both reviews, no more than 13 percent of the non-detained aliens in our samples left the country. Importantly, the 2003 review found that non-detained aliens in high-risk groups such as those from countries designated as state sponsors of terrorism and aliens with criminal records generally were not removed. In addition, we found that the INS had made little progress between 1996 and 2003 in implementing recommendations to improve its ability to remove aliens issued final orders of removal.

¹ The EOIR, a DOJ component, is responsible for adjudicating immigration cases at the trial and appellate levels.

² See U.S. Department of Justice, Office of the Inspector General, *Immigration and Naturalization Service's Deportation of Aliens After Final Orders Have Been Issued* (Report No. I-96-03), March 1996, and *The Immigration and Naturalization Service's Removal of Aliens Issued Final Orders* (Report No. I-2003-004), February 2003.

Because of a variety of factors, it is clear that detaining every alien undergoing a removal proceeding is not practical or desirable. However, we reviewed the INS's experience in removing aliens who had been issued final orders of removal after their cases had been adjudicated and finalized, including all appeals. We concluded that the INS did not effectively use all means at its disposal to improve its performance at removing aliens who were not detained. While two years have passed since we issued our last report and the INS moved to the DHS, the reasons for the agency's historical inability to remove non-detained aliens, as documented in our reports, and the possible approaches we identified for improving its capability in this area remain relevant as the Subcommittee examines the appropriate level of resources to dedicate to interior immigration enforcement.

II. REMOVAL OF UNLAWFUL ALIENS WITH FINAL ORDERS

When unlawful aliens are apprehended, the removal process begins with the filing of charging documents with the EOIR. After court hearings are scheduled with the EOIR, the INS – now the Bureau of Immigration and Customs Enforcement (ICE) in the DHS – mails information about the dates, times, and locations of the hearings to aliens. To ensure that aliens that could pose a danger are removed, the INS was required to detain certain categories of aliens. In September 1996, the Illegal Immigration Reform and Immigrant Responsibility Act required that aliens with criminal backgrounds, those deemed a flight risk, those with mental illnesses, and those with dangerous physical illnesses be detained pending their removal. Other aliens are “non-detained,” the term used to describe aliens who either are not taken into custody or are released from custody while their immigration cases are pending. At the removal hearings, an Immigration Judge adjudicates the alien's case and either allows the alien to remain in the United States or orders the alien removed. Aliens may appeal EOIR rulings to the Board of Immigration Appeals and then to federal courts.

The cases we reviewed for our 1996 and 2003 reports included aliens who either had exhausted their appeals or did not appeal the initial court decisions. Therefore, the removal orders for these aliens were final and could be carried out by the INS. Both reports found that the INS was effective at removing more than 90 percent of *detained* aliens issued final removal orders by the EOIR. The reasons for allowing the other detained aliens to remain in the United States included political or humanitarian concerns, grants of administrative relief, and the INS's inability to obtain necessary travel documents from the aliens' home countries.

However, both of our reviews found that the INS was far less effective at apprehending and removing *non-detained* aliens ordered to leave the

country. In 1996, only 11 percent of non-detained aliens who had received final orders were removed. In some cases, the INS did not pursue removal because of political or humanitarian concerns, but in most cases the aliens had moved or failed to appear for removal after issuance of final orders (i.e., absconded), and the INS was unable to find them. Delays in transmitting the aliens' final removal orders from the EOIR to the INS may have contributed to the INS's difficulty in locating aliens. In addition, the INS did not always act promptly to carry out removals, and these delays also may have contributed to making it difficult to locate aliens for removal.

To improve the INS's ability to carry out removals, in 1996 the OIG recommended that the INS take more aggressive actions to remove non-detained aliens, such as:

- Moving more quickly to present surrender notices to aliens after receiving final orders;
- Delivering surrender notices instead of mailing them to aliens;
- Taking aliens into custody at hearings when final orders are issued;
- Pursuing aliens who fail to appear and reviewing procedures for closing cases for aliens who fail to appear; and
- Coordinating with other government agencies to make use of all databases available for tracking aliens who fail to appear.

In late 2002, we began a follow-up review to assess the status of the INS's efforts to remove aliens with final orders and the progress of the INS's actions to implement the recommendations in our 1996 report. Our February 2003 report found that the INS had made little progress in removing non-detained aliens since 1996, improving its rate of removal to only 13 percent. We also examined three high-risk groups of non-detained aliens and found that the INS was ineffective at removing these individuals. The groups we examined were:

- Aliens from countries identified as sponsors of terrorism. In 2001, the Department of State identified seven countries as state sponsors of terrorism: Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria. We found that from October 1, 2000, to December 31, 2001, the INS removed only 6 percent of the non-detained aliens from these countries. Further, half of these removals occurred in the 3½ months after the September 11, 2001, terrorist attacks.

- Aliens with criminal records. Although the INS established the removal of criminal aliens as its first priority in its 1999 Interior Enforcement Strategy, we found that it had removed only 35 percent of the non-detained criminals in our sample.
- Aliens denied asylum. We found that the INS removed only 3 percent of the non-detained asylum seekers who received final removal orders. We were concerned by the low removal rate for unsuccessful asylum seekers because this group may include potential terrorists. Several individuals convicted of terrorist acts in the United States requested asylum as a part of their efforts to remain in the country.

Because of its ineffectiveness at removing aliens with final orders, as of June 2002 the INS estimated that a backlog of about 355,000 aliens remained in the United States with unexecuted removal orders. According to the INS, at the rate that the INS removed aliens in 2002 that backlog represented a 20- to 30-year workload. During our 2003 review, INS officials acknowledged that they did not have the resources to mount a substantial effort to locate and remove the large number of aliens who had absconded.

We also found that the INS had done little to timely or fully implement the recommendations we made in 1996 to improve its removal rate of aliens issued final orders. I will now briefly describe the INS's lack of progress in addressing the recommendations from our 1996 report before discussing other factors that affect alien removals.

III. THE INS FAILED TO TAKE TIMELY CORRECTIVE ACTIONS

While some factors regarding removal of aliens issued final orders, such as resource limitations, were wholly or partially outside the control of the INS, our reviews found that the agency did not act to correct factors that were within its control. In response to our 1996 report, the INS agreed to implement a variety of specific actions we recommended that would improve its effectiveness at removing non-detained aliens. However, in our 2003 follow-up review we found that the INS had delayed or failed to complete the implementation of these corrective actions and had failed to significantly improve its removal of non-detained aliens between 1996 and 2002.

Pilot absconder removal project. In response to our 1996 report, the INS agreed to conduct field tests in which alien absconders would be targeted for removal. The INS later reported to us that a limited duration pilot had been conducted with positive results and that the INS intended to

conduct two additional field tests before expanding the program. However, when we conducted our 2003 follow-up review, the INS was unable to provide any information regarding the pilot projects, the implementation of the program in response to the pilot projects, or even to locate anyone who could remember the pilot program.

Resources for apprehending absconders. In response to our 1996 report, the INS agreed to use a fiscal year (FY) 1996 budget enhancement of \$11.2 million to fund 142 positions to remove alien absconders. It also agreed to use its Law Enforcement Support Center to enter alien absconder information into the National Crime Information Center and develop an automated list of criminal absconders so that federal, state, and local law enforcement agencies could assist in apprehending them. However, the INS did not establish absconder removal teams or develop an automated list of absconders until after the September 11 terrorist attacks. Moreover, the INS was unable to document how it used the \$11.2 million budget enhancement it received in FY 1996 for this program.

Rulemaking to improve notification methods. In 1996 we found that the INS was not effective at notifying aliens to surrender for removal and therefore we recommended that the INS present surrender notices to aliens more promptly after the aliens had received their final orders. We also recommended that the INS deliver surrender notices instead of mailing them to aliens. After agreeing to improve its methods of notifying aliens of their duty to surrender for removal and publishing a proposed rule in 1998 that would have enhanced its ability to remove aliens expeditiously if they failed to appear, the INS allowed the rulemaking to lapse. After the September 11 attacks, the INS revived and expanded the rulemaking titled *Requiring Aliens Ordered Removed from the United States to Surrender to the Immigration and Naturalization Service for Removal*. In preparation for this hearing, we checked with the EOIR on the status of the rulemaking and were told that as of March 2005 the rule still was not final.

IV. RECOMMENDATIONS IN OUR FEBRUARY 2003 REPORT

As a result of the continued problems we found in our follow-up review, our February 2003 report made eight additional recommendations to the INS to improve its ability to remove aliens issued final orders of removal. For example, we recommended that the INS establish annual goals for apprehending and removing absconders and other non-detained aliens with final orders. In addition, we recommended that the INS identify the resources required to achieve its annual and strategic performance goals and track its resources to ensure they were used as intended.

Because of the data problems we encountered in reviewing the INS's electronic records, we also recommended that the INS establish a program

to correct missing and inaccurate data and work with the EOIR to reconcile discrepancies between INS and EOIR data systems. We recommended that the INS work with the EOIR to implement a shared data system for case tracking, similar to the Interagency Border Inspections System, to identify and process aliens with final orders.³ Finally, we recommended that the INS improve the utility of its website for informing the public about high-risk absconders and to facilitate reporting of leads on absconders.

The INS did not respond to these recommendations before the agency was transferred to the DHS in March 2003. Since March 2003, the DHS Inspector General's Office has had the responsibility for tracking and monitoring the DHS's response to these recommendations. In preparation for this hearing, we asked the DHS OIG about the status of the response to these recommendations. The DHS OIG provided us with information that indicates that ICE has followed up on several of our recommendations. According to a March 2004 DHS report on management challenges, ICE developed a six-year plan to align its long-term detention and removal strategies with the resources required to fulfill those missions. ICE also created fugitive operations teams, issued new guidance to ensure administrative case closures were not abused, was working to replace its electronic case tracking system, and was working with the EOIR to improve the quality of data in its system. Finally, ICE established a "Most Wanted" section on its website.

V. OTHER FACTORS AFFECTING ALIEN REMOVALS

In our two reviews, we also identified a variety of factors that limited the INS's effectiveness at removing aliens with final orders. Some of these factors were within the INS's control, but others were not. For example, limitations in resources are an issue in addressing the detention and removal of aliens issued final orders. The resource limitations that hindered the INS's removal of aliens included a lack of detention space, limited numbers of detention officers, and too few investigators and special agents to locate aliens in order to carry out the removals. According to the DOJ's FY 2001 Performance Report, the INS continued to face a "severe shortage of bed space and personnel to effectively handle the processing and removal of aliens in immigration proceedings."⁴ Although we have not reviewed this issue since the INS left the DOJ two years ago, February 2004

³ The Interagency Border Inspections System is an interagency effort by the INS, U.S. Customs Service (now part of ICE), Department of State, and Department of Agriculture to improve border enforcement and controls and to facilitate the inspections of applicants for a dmission to the United States.

⁴ The DOJ's *FY 01 Performance Report/FY 02 Revised Final Performance Plan/FY 03 Performance Plan*.

congressional testimony by a DHS official indicated that ICE had a daily detention population of approximately 21,000 aliens.

We note that the DHS appears to have directed some additional resources to removing aliens with final orders. According to the DHS Office of Detention and Removal's Strategic Plan for 2003 to 2012, the agency has dedicated 40 officers to its National Fugitive Operations Program/Absconder Apprehension Initiative. However, the plan acknowledges that the staffing level is "woefully inadequate to achieve the goal" of eliminating 100 percent of the backlogged unexecuted orders of removal.

Another factor we found that affected the INS's ability to remove aliens was the lack of complete and accurate data, especially correct addresses for aliens. Our own reviews, as well as Government Accountability Office and INS internal audits conducted between 1996 and 2003, found that the INS had serious and continuing problems with data reliability that impaired its ability to process aliens for removal. For example, in our 2003 review we found errors in aliens' names, missing cases, nationality errors, and incorrect case file numbers in 11 percent of the files we reviewed from the group of aliens from states that sponsor terrorism.

In addition, during our field work for our 1996 and 2003 reports, we found that the INS and the EOIR were unable to share information on immigration cases automatically. As a result, according to an INS statistician we interviewed for our 2003 report, an estimated 20 percent of the total cases in INS and EOIR systems did not contain matching data. Moreover, 195,000 files in the EOIR's system did not appear in the INS's system. As I noted earlier, the DHS has reported that ICE is working to correct its data problems.

External factors limiting removals include the quality of diplomatic relations between the United States and other nations. The INS was unable to remove aliens with final orders if they were from countries designated by the President for Deferred Enforced Departure. Examples of these cases include deferrals granted over the last 15 years to aliens from China, Haiti, and Liberia. The INS also was unable to remove aliens if they had been granted Temporary Protected Status by the Attorney General for humanitarian or other reasons.⁵

⁵ In 1990, Congress provided the Attorney General authority to grant Temporary Protected Status to aliens from certain countries if the aliens' lives would be threatened by natural disasters, armed conflicts, or other extraordinary conditions. As of July 2002, the Attorney General had granted or extended Temporary Protected Status to nationals from Angola, Burundi, El Salvador, Honduras, Montserrat, Nicaragua, Sierra Leone, Somalia, and Sudan.

VI. CONCLUSION

Our office no longer has oversight of the federal government's immigration enforcement efforts. That jurisdiction now rests with the DHS Inspector General's Office. We therefore cannot provide the Subcommittee with definitive information regarding whether the actions taken by ICE during the past two years fully implement our February 2003 recommendations or the extent to which ICE has made progress in removing aliens issued final orders. However, we believe that effective interior enforcement remains an important issue, and we believe that the DHS - as well as this Subcommittee and the DHS OIG - should continue to focus attention on this important area.

This concludes my prepared statement. I would be pleased to answer any questions.