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**March 1998**

# **ILLEGAL ALIENS**

## **Changes in the Process of Denying Aliens Entry Into the United States**



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United States  
General Accounting Office  
Washington, D.C. 20548

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**General Government Division**

B-275638

March 31, 1998

The Honorable Orrin G. Hatch  
Chairman  
The Honorable Patrick J. Leahy  
Ranking Minority Member  
Committee on the Judiciary  
United States Senate

The Honorable Henry J. Hyde  
Chairman  
The Honorable John Conyers, Jr.  
Ranking Minority Member  
Committee on the Judiciary  
House of Representatives

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 was enacted September 30, 1996. Among other things, this act included new provisions establishing an expedited removal process for dealing with aliens who attempt to enter the United States by engaging in fraud or misrepresentation (e.g., falsely claiming to be a U.S. citizen or misrepresenting a material fact) or who arrive with fraudulent, improper, or no documents (e.g., visa or passport). The new process went into effect on April 1, 1997, and reduces aliens' rights to seek review of an inadmissibility decision. As part of this new process, aliens who are subject to expedited removal and assert a fear of being returned to their home country or country of last residence are to be provided a credible fear interview. The purpose of this interview is to identify aliens whose asylum claims have a significant possibility of succeeding.

This report addresses (1) how the expedited removal process and Immigration and Naturalization Service (INS) procedures to implement it are different from the process and procedures used to exclude aliens before the 1996 Act; (2) the implementation and results of the process for making credible fear determinations during the 7 months following April 1, 1997; and (3) the mechanisms that INS established to monitor expedited removals and credible fear determinations and to further improve these processes. It also provides information on INS' and immigration judges' estimates of costs to implement the expedited removal process and the time required to adjudicate expedited removal cases and credible fear determinations.

Copies of this report are being sent to the Attorney General; the Director, Office of Management and Budget; and other interested parties. Major contributors to this report are listed in appendix IX. If you need any additional information or have any questions, please contact me on (202) 512-8777.

Richard M. Stana  
Associate Director  
Administration of Justice Issues

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# Executive Summary

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## Purpose

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (the 1996 Act) amended the Immigration and Nationality Act. The 1996 Act included provisions establishing a new process for dealing with aliens who attempt to enter the United States by engaging in fraud or misrepresentation (e.g., falsely claiming to be a U.S. citizen or misrepresenting a material fact) or who arrive with fraudulent, improper, or no documents (e.g., visa or passport). This process, which is called expedited removal, gives Immigration and Naturalization Service (INS) officers, instead of immigration judges, the authority to formally order these aliens removed from the United States. The expedited removal process reduces aliens' rights to seek review of removal orders. Aliens who are subject to expedited removal and express a fear of being persecuted or tortured if they are returned to their home country or country of last residence are to be provided a credible fear interview. The purpose of this interview is to identify aliens whose asylum claims have a significant possibility of succeeding. The expedited removal process went into effect on April 1, 1997.

The 1996 Act requires GAO to report on the implementation of this new process. This report responds to that requirement by describing (1) how the expedited removal process and INS procedures to implement it are different from the process and procedures used to exclude aliens before the 1996 Act; (2) the implementation and results of the process for making credible fear determinations during the 7 months following April 1, 1997; and (3) the mechanisms that INS established to monitor expedited removals and credible fear determinations and to further improve these processes. GAO also provides information on INS' and immigration judges' estimates of costs to implement the expedited removal process and the time required to adjudicate expedited removal cases and credible fear determinations.

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## Background

Aliens who want to be admitted to the United States at a port of entry generally are to present documents to INS inspectors that show the aliens are authorized to enter. INS can prohibit aliens from entering the United States for a number of reasons (e.g., criminal activity or failing to have a valid visa or passport).

In the years preceding the passage of the 1996 Act, concerns were raised about the difficulty of preventing illegal aliens from entering the United States and the difficulty of identifying and removing the illegal aliens once they entered this country. The expedited removal process was designed to

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prevent aliens who attempt to enter the United States by engaging in fraud or misrepresentation or who arrive without proper documents from entering this country at our ports of entry.

Before the 1996 Act, aliens who attempted to enter the United States by engaging in fraud or misrepresentation or who arrived with fraudulent, improper, or no documents could be formally ordered removed only by an immigration judge through a process called an exclusion hearing. With the passage of the 1996 Act, INS inspectors can issue formal removal orders (which are called expedited removal orders), instead of immigration judges, to aliens who attempt to enter the United States by engaging in fraud or misrepresentation or who arrive with fraudulent, improper, or no documents. As part of the expedited removal process, INS inspectors are to provide the aliens with required information and to ask the aliens specific questions, including questions on whether the aliens have a fear of being returned to their home country or country of last residence. With few exceptions, aliens cannot request an immigration judge's review of the INS inspectors' removal decisions. However, before the orders are issued, supervisors are to review the inspectors' removal decision.

The purpose of having the inspector ask aliens questions about a fear of being returned is to identify aliens who may have a credible fear of persecution and, thus, may be eligible for asylum. Inspectors also are to pursue any other indications from the aliens that they have such a fear. If aliens exhibit a fear of return, inspectors are to refer the alien to an asylum officer for a credible fear interview. The purpose of this interview is to identify aliens whose asylum claims have a significant possibility of succeeding. The asylum officers are to provide required information to aliens and obtain specific information from aliens that is related to their having a credible fear of persecution and being subjected to torture. In all cases, a supervisor is to review the asylum officers' credible fear determinations.

Aliens whom the asylum officers find to have a credible fear are to be referred to an immigration judge for a removal proceeding. The judge is to decide during this proceeding whether the aliens' asylum claims warrant their being granted asylum in the United States. If the asylum officer finds that the alien does not have a credible fear, the alien has a right to request that an immigration judge review the negative credible fear determination. If the immigration judge agrees with the asylum officer's negative credible fear determination, the alien cannot appeal the immigration judge's decision and is to be removed through the expedited removal process. If

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the immigration judge disagrees with the asylum officer's negative credible fear determination, the alien then can apply for asylum before an immigration judge through the removal proceeding process.

In doing its study, GAO reviewed INS' and immigration courts' data and records to obtain nationwide information about aliens attempting to enter the United States before and after the 1996 Act. GAO visited 5 judgmentally selected locations that handled about half of the 29,170 expedited removal cases between April 1, 1997, and October 31, 1997. At these 5 locations, GAO (1) reviewed 434 randomly selected case files so that estimates could be made about all of the expedited removal cases in these locations between May 1 and July 31, 1997, that did not go on to a credible fear determination interview and (2) observed a limited number of INS inspectors' interviews with aliens, asylum officers' credible fear determinations, and immigration judges' reviews of negative credible fear determinations. In addition, GAO reviewed all 84 negative credible fear determination case files nationwide for aliens who attempted to enter the United States between May 1 and July 31, 1997. GAO also met with Department of Justice officials and representatives from nongovernmental organizations who are knowledgeable about the expedited removal process.

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## Results in Brief

Two major differences between the exclusion process used before the 1996 Act and the act's expedited removal process are INS inspectors' authority to issue the expedited removal order and the aliens' limited right of review of that order. Other changes included an increased penalty for inadmissible aliens, including those subject to expedited removal, and a more structured inspection process for expedited removal than for the previous exclusion process. Also, generally at the five locations GAO visited, INS estimated that the amount of time its inspectors took to complete the expedited removal process was greater than the amount of time used to complete the steps required of INS inspectors in the exclusion process. The increase in time was due, in part, to the additional steps required of INS inspectors in the expedited removal process. This increased time by INS inspectors could be offset by reductions in time by immigration judges who no longer make these removal decisions.

During the first 7 months that the expedited removal process was in place, 29,170 aliens attempted to enter the country and were placed in expedited removal. INS inspectors referred 1,396 of these aliens to asylum officers for credible fear interviews. As of December 1997, almost all of the

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approximately 27,800 remaining aliens had been removed from the United States. At the five locations it visited, GAO reviewed documentation in randomly selected case files of aliens subject to expedited removal (but were not referred for a credible fear interview) between May 1 and July 31, 1997. The results of this review showed that between an estimated 80 percent and 100 percent of the time INS inspectors and supervisors documented that they followed certain INS procedures. These documented procedures included activities such as supervisors' review of inspectors' removal orders and inspectors' asking aliens specific questions about their fear of being returned to their home country or country of last residence.

Of the 1,396 aliens referred to asylum officers for credible fear determinations, asylum officers completed interviews with 1,108 as of November 13, 1997, and found that 79 percent had a credible fear. Immigration judges received 198 cases to review asylum officers' negative credible fear determinations between April 1 and October 31, 1997. The judges affirmed the asylum officers' determinations in 83 percent of these cases. GAO's nationwide review of all 84 negative credible fear determination case files between May 1 and July 31, 1997, and 9 observations made during visits to the 5 locations, showed that asylum officers generally documented that they followed INS procedures. However, some case files indicated that the asylum officers did not document reading certain required information to the alien.

INS has developed or is in the process of developing mechanisms to monitor the expedited removal procedures, including the credible fear determinations. These mechanisms include creating an Expedited Removal Working Group to visit locations and address problems, creating a quality assurance team at headquarters to review selected credible fear files, and meeting with nongovernmental organizations to discuss issues and concerns. INS has made changes to its processes on the basis of concerns raised by these internal reviewers and outside organizations.

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## GAO's Analysis

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### Differences Between the Exclusion and Expedited Removal Processes

The 1996 Act and the implementation of the expedited removal provision affected immigration proceedings in numerous ways. A major difference between the exclusion process in place before the 1996 Act and the expedited removal process is that under the exclusion process, aliens

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could have received a hearing before an immigration judge to determine their eligibility for entry into the United States. Furthermore, under the exclusion process, aliens had the right to appeal the immigration judges' decisions not to allow them to enter the country to the Board of Immigration Appeals. Aliens also could appeal an adverse decision by the Board through the federal courts. However, the federal court's review was limited to whether the government followed established procedures. Under the expedited removal process, INS inspectors can issue removal orders to aliens, and aliens cannot request an immigration judge's review of the INS' decisions, with few exceptions. (See pp. 35 and 36.)

Other changes resulting from the 1996 Act or its implementation include the following:

- The penalty for aliens who are found inadmissible to the United States, including those subject to expedited removal, generally was increased from a 1-year reentry prohibition before the 1996 Act to a 5-year prohibition after the 1996 Act. (See p. 36.)
- INS developed specific procedures for inspectors to follow when processing aliens subject to expedited removal. These procedures include specific steps for (1) advising aliens of their rights and the consequences of the expedited removal process, (2) taking a sworn statement from the alien that is to include all pertinent facts of the case, and (3) obtaining supervisory review of inspectors' decisions. Furthermore, INS inspectors now have additional responsibility for identifying aliens who fear being returned to their home country or country of last residence and for referring these aliens to an asylum officer for a credible fear interview. (See pp. 36 and 37.)
- INS estimates that the changes in INS' procedures resulting from the 1996 Act generally increased the average time needed by inspectors to process affected aliens at the five locations GAO visited. Specifically, for cases not involving a credible fear referral, the estimated average time needed to process cases increased between 30 minutes and 2 hours at three locations, and the time generally remained the same at the other two locations. Times involved in steps in the pre-1996 exclusion process that are no longer applicable were not included in GAO's analysis. (See pp. 37 and 38.)

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## Implementation of the Expedited Removal Procedures

Between April 1, 1997, and October 31, 1997, INS data showed that 29,170 aliens were processed under the expedited removal procedures, which includes 1,396 aliens who were referred for a credible fear interview and



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27,774 aliens who were not referred for a credible fear interview. Almost all of the 27,774 aliens were removed from the United States, as of December 15, 1997. (See pp. 40 and 41.)

GAO's reviews of case file documentation indicated a range of compliance with certain aspects of the required expedited removal processes at the five locations. For example, case file documentation indicated that in almost all instances aliens signed their sworn statement, as required. The files showed, however, that at four of the locations inspectors did not always document that they asked aliens all three of the required questions to determine if the aliens had a fear of returning to their home country or country of last residence. The inspectors did not document that they asked at least one of the required questions between an estimated 1 and 18 percent of the time at these locations. The case files also had documentation that supervisors reviewed the expedited removal orders in an estimated 80 to 100 percent of the cases at the five locations. (See pp. 42 through 44.)

An INS official said that INS, through its monitoring efforts, also has identified case files that did not document that these processes occurred. She added that INS reiterated to field offices that the required questions must be asked and that supervisors must review the orders. In addition, the case files are to contain documentation that these questions were asked and that the review was done. (See pp. 43 and 44.)

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## Implementation of the Credible Fear Process

INS inspectors referred 1,396 aliens who attempted to enter the United States between April 1, 1997, and October 31, 1997, to an asylum officer for a credible fear interview. Asylum officers completed interviews for 1,108 of these aliens as of November 13, 1997, and found that 79 percent had a credible fear of persecution. The percentage of aliens whom asylum officers determined to have a credible fear ranged by asylum office from 59 to 93 percent. In 198 cases between April 1, 1997, and October 31, 1997, aliens requested that an immigration judge review the asylum officers' negative credible fear determinations. The judges affirmed the asylum officers' negative credible fear determinations in about 83 percent of these cases. (See pp. 48, 49, and 51.)

GAO's review of all of the 84 negative credible fear determination case files nationwide for a 3-month period showed that asylum officers generally documented that they followed procedures for determining an alien's credible fear of persecution. However, asylum officers did not consistently

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document in the case files that they followed procedures for providing the aliens information regarding torture. The case files showed that asylum officers marked on the record of interview that (1) in 83 cases, they read the required paragraphs regarding the aliens' fear of persecution and (2) in 81 cases, they informed the aliens of their right to have an immigration judge review a negative credible fear determination. In 19 cases, the asylum officers did not mark that they read the paragraph on torture. Of the nine credible fear interviews that GAO attended, asylum officers generally followed INS' procedures regarding credible fear interviews, including reading the required information on torture. An INS official said that INS has reiterated to its asylum officers that they are to ask the torture questions in the credible fear interview. (See pp. 49 and 50.)

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## **INS Efforts to Monitor the Expedited Removal Process, Including the Credible Fear Process**

INS has developed or is in the process of developing mechanisms to monitor the expedited removal process, which includes the credible fear determination process. For example, INS established an Expedited Removal Working Group to identify and address policy questions, procedural and logistical problems, and quality assurance concerns related to the expedited removal process. INS' Asylum Office established a quality assurance team at headquarters to review selected credible fear case files. The purposes of the case file reviews are to analyze decisions in individual cases, provide feedback to applicable asylum officers, and identify trends or patterns on the basis of the reviews. In addition, INS' Office of Internal Audit has incorporated into its field audit program, criteria for reviewing compliance with the expedited removal procedures. (See pp. 53 and 54.)

INS also has met periodically with nongovernmental organizations to discuss issues related to the expedited removal process, including the credible fear process. Several nongovernmental organizations raised general concerns regarding the expedited removal process and identified specific problems that aliens said they encountered when they arrived at ports of entry. (See pp. 54 and 55.)

On the basis of concerns raised by INS internal reviewers and outside organizations, INS has made or is making changes to its processes and continues to monitor compliance with its policies and procedures. (See p. 56.)

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## **Recommendations**

Since INS has established mechanisms to monitor and improve the expedited removal process and has taken steps to address the

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documentation problems GAO identified, GAO is making no recommendations in this report.

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## **Agency Comments**

We provided a draft of this report to the Attorney General for review and comment. On March 16, 1998, we met with Department of Justice officials, including INS' Director, International Affairs, to obtain Justice's comments. Overall, the officials stated that the report was accurate and fair. They also provided technical comments, which have been incorporated in this report where appropriate.

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**Abbreviations**

BIA	Board of Immigration Appeals
EOIR	Executive Office for Immigration Review
FRCP	Federal Rules of Civil Procedure
INA	Immigration and Nationality Act
INS	Immigration and Naturalization Service
JFK	John Fitzgerald Kennedy International Airport
OIA	Office of Internal Audit





# Introduction

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The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (the 1996 Act), which amended the Immigration and Nationality Act (INA),<sup>1</sup> as amended, was enacted September 30, 1996 (P.L. 104-208). Among other things, the 1996 Act included a new provision, which is called expedited removal, for dealing with aliens who attempt to enter the United States by engaging in fraud or misrepresentation (e.g., falsely claiming to be a U.S. citizen or misrepresenting a material fact) or who arrive with fraudulent, improper, or no documents (e.g., visa or passport). The expedited removal provision, which went into effect on April 1, 1997, reduces an alien's right to seek review of a determination of inadmissibility decision.

In the years preceding the passage of the 1996 Act, concerns were raised about the difficulty of preventing illegal aliens from entering the United States and the difficulty of identifying and removing the illegal aliens once they entered this country. The expedited removal process was designed to prevent aliens who attempt to enter the United States by engaging in fraud or misrepresentation or who arrive without proper documents from entering this country at our ports of entry.

Several legal services organizations and individual aliens have challenged the constitutionality of the expedited removal process established by the 1996 Act (see app. I for a discussion of these court cases). These suits claim, among other things, that the expedited removal process denies substantive and procedural rights to asylum seekers; creates an unreasonably high risk of erroneous removals of citizens, lawful permanent residents, and other holders of valid visas; denies the organizations' First Amendment right of access to aliens applying for entry into the United States; and may not be correctly applied to unaccompanied minors. As of March 15, 1998, these cases were pending in federal court.

The Immigration and Naturalization Service (INS) and immigration judges have roles in implementing the provisions of the 1996 Act relating to the expedited removal of aliens. INS' responsibilities include (1) inspecting aliens to determine their admissibility and (2) reviewing the basis and credibility of aliens who are subject to expedited removal but who claim a fear of persecution if returned to their home country or country of last residence.<sup>2</sup> Aliens can request that immigration judges review INS' negative credible fear determinations. Immigration judges, who report to the Chief Immigration Judge, are in the Executive Office for Immigration Review

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<sup>1</sup>8 U.S.C. 1101, et seq.

<sup>2</sup>For the purposes of this report, we use the term "home country" in referring to the aliens' home country or their country of last residence.

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(EOIR), within the Department of Justice. The immigration judges are located in immigration courts throughout the country.

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## **Aliens Attempting to Enter the United States at Ports of Entry**

Before the 1996 Act, aliens who wanted to be admitted to the United States at a port of entry were required to establish admissibility to an inspector. This requirement remains applicable under the 1996 Act. INS has about 4,500 inspectors and about 260 staffed ports of entry. Generally, aliens provide inspectors with documents that show they are authorized to enter this country. At this primary inspection, the INS inspector either permits the aliens to enter or sends the aliens for a more detailed review of their documents or further questioning by another INS inspector. The more detailed review is called secondary inspection. In deciding whether to admit the alien, the INS inspector is to review the alien's documents for accuracy and validity and check INS' and other agencies' databases for any information that could affect the alien's admissibility. After reviewing the alien's documents and interviewing the alien at the secondary inspection, the inspector may either admit or deny admission to the alien or take other discretionary action. INS can prohibit aliens from entering the United States for a number of reasons (e.g., criminal activity or failing to have a valid visa, passport, or other required documents). Inspectors have discretion to permit aliens to (1) enter the United States under limited circumstances even though they do not meet the requirements for entry or (2) withdraw their applications for admission and depart.

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## **Exclusion Process Before Implementation of the 1996 Act**

Before the April 1, 1997, enactment of the expedited removal process, the INA authorized the Attorney General to exclude certain aliens from admission into the United States. Aliens whom inspectors determined to be excludable from this country generally were allowed either to (1) return voluntarily to the country from which they came or (2) appear for an exclusion hearing before an immigration judge. During this hearing, aliens who said they had a fear of persecution if they were returned to their home country could file an application for asylum. The immigration judges' decisions could be appealed to EOIR's Board of Immigration Appeals (BIA), which is a quasi-judicial body that hears appeals of INS' and immigration judges' decisions. Furthermore, the alien could appeal BIA's decision through the federal court system. The scope of the federal court's review was limited to whether the government followed established procedures. Aliens who were excluded from entering the United States under this process generally were barred from reentering this country for 1 year. The exclusion process is discussed in more detail in chapter 2.

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From April 1, 1996, to October 31, 1996, the monthly average number of aliens who INS (1) inspected at U.S. ports of entry<sup>3</sup> was about 27.1 million; (2) referred to secondary inspection was about 780,000; and (3) did not admit into this country was about 63,250.

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**Expedited Removal  
Process After  
Implementation of the 1996  
Act**

Under the 1996 Act, an INS inspector, instead of an immigration judge, can issue an expedited removal order to aliens who (1) are denied admission to the United States because they engage in fraud or misrepresentation or arrive without proper documents when attempting to enter this country and (2) do not express a fear of returning to their home country. INS is to remove the alien from this country.<sup>4</sup> Aliens who are issued an expedited removal order generally are barred from reentering this country for 5 years.

The expedited removal provision also established a new process for aliens who express a fear of being returned to their home country and who are subject to expedited removal. Inspectors are to refer such aliens to INS asylum officers for an interview to determine whether the aliens have a credible fear of persecution or harm if returned to their home country. This is called a credible fear interview. The term “credible fear of persecution” is defined by statute as “a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien’s claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under Section 208” of the INA.

INS has a cadre of about 400 asylum officers who are involved with the asylum process. About 300 of these officers have been trained to conduct credible fear interviews. INS has eight asylum offices nationwide. The expedited removal process is discussed in more detail in chapter 2, and the credible fear process is discussed further in chapter 3.

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<sup>3</sup>These inspections were done at primary inspection.

<sup>4</sup>There are other reasons why INS may find an alien inadmissible (e.g., criminal activity). However, expedited removal orders can only be issued to aliens whom INS finds inadmissible because the aliens attempted to enter the United States by engaging in fraud or misrepresentation or arrived without proper documents at the U.S. ports of entry. If INS includes any other charge against an alien, the alien cannot be processed under expedited removal procedures. INS is not required to charge an alien with all of the grounds under which it finds the alien inadmissible. With its new authority under the 1996 Act to issue expedited removal orders, INS’ guidance to its inspectors states that, generally, if aliens are inadmissible because they attempted to enter the United States by engaging in fraud or misrepresentation or arrived without proper documents, additional charges should not be brought, and the alien should be placed in the expedited removal process.

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From April 1, 1997, to October 31, 1997, the monthly average number of aliens who INS (1) inspected at ports of entry was about 28.9 million;<sup>5</sup> (2) referred to secondary inspection was about 608,000; and (3) did not admit was about 56,500.

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## Objectives, Scope, and Methodology

The 1996 Act requires us to study the implementation of the expedited removal process, including credible fear determinations, and report to the Senate and House Committees on the Judiciary. We address the following aspects of the exclusion and expedited removal processes in this report:

- how the expedited removal process and INS procedures to implement it are different from the process and procedures used to exclude aliens before the 1996 Act;
- the implementation and results of the process for making credible fear determinations during the 7 months following April 1, 1997; and
- the mechanisms that INS established to monitor expedited removals and credible fear determinations and to further improve these processes.

We also provide information on INS' and EOIR's estimates of costs to implement the expedited removal process and the time required to adjudicate expedited removal cases and credible fear determinations.

We did our work at INS and EOIR headquarters offices and INS field locations at five U.S. ports of entry—two land ports and three airports. These five locations had about 50 percent of the expedited removal cases during the first 7 months after the 1996 Act was implemented. We judgmentally selected these 5 of the about 260 staffed ports to include a large number of entries by aliens, geographically diverse areas, and the 2 major types of ports of entry (land ports and airports). We selected San Ysidro (CA), as a southern land port; Niagara Falls (NY), as a northern land port; and Miami International, Los Angeles International, and John Fitzgerald Kennedy International (JFK) Airports. According to INS, these ports were expected to have large volumes of expedited removal orders, and the airports were anticipated to have a large number of credible fear referrals. We discussed these selections with INS officials who said that the ports should provide us with a reasonable representation of its implementation of the new law. Although we visited the Niagara Falls land port, we included in some of our analyses, data for the entire Buffalo district, which includes the Niagara Falls land port.

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<sup>5</sup>These inspections were done at primary inspection.

We selected the three asylum offices at which we did our field work—New York, Miami, and Los Angeles—because they conducted credible fear interviews for four (Los Angeles, JFK, Miami, and San Ysidro) of the five ports we visited. The Newark (NJ) asylum office conducted credible fear interviews for the Buffalo District Office. Because Newark was not one of the five ports we included in our review, we decided not to increase our audit costs by adding another location. We did our fieldwork related to EOIR at four of the immigration courts—Wackenhut (New York City), Krome (Miami), San Pedro (Los Angeles), and El Centro (El Centro, CA)—which held reviews of negative credible fear determinations for aliens who attempted entry at the ports we visited. We selected these four courts because they were near the ports of entry included in our review.

We limited the data on removal of aliens before April 1, 1997, to the airports because INS did not maintain nationwide data on the reasons aliens were not admitted into the United States. However, the individual airports maintained data on the reasons for aliens' inadmissibility into the country. Therefore, we analyzed the data for the Miami, Los Angeles, and JFK airports to determine the aliens' dispositions.

To present disposition data on aliens who were subject to the expedited removal process since April 1, 1997, we obtained data from INS on aliens who were processed under expedited removal but were not referred for a credible fear interview, both nationwide and for the five ports in our study.

To develop data on inspectors' completion of required forms, background information about the aliens, and the length of the expedited removal process from the day the alien attempted to enter the country to the day the alien was removed, we reviewed probability samples<sup>6</sup> of 434 files for aliens who entered the expedited removal process but were not referred for a credible fear interview. This effort consisted of five separate reviews of individuals entering the country between May 1, 1997, and July 31, 1997, at the five locations we visited and individuals who were processed through the expedited removal process.

To obtain data on the time needed to adjudicate cases before and after expedited removal, we asked INS and EOIR officials to estimate the time required for different steps in the adjudication process, including credible fear determinations, for the locations included in our study.

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<sup>6</sup>A probability sample is drawn using statistical, random selection methods that ensure that each member of the universe has a known probability of being selected. This approach allows us to make inferences about the entire universe.

To obtain estimates for the costs to INS and EOIR to implement the expedited removal process, including the credible fear determinations, we asked each agency to develop cost data.

To develop workload data related to the credible fear process that went into effect on April 1, 1997, INS provided nationwide data. These data included the number of credible fear interviews held and the results of those interviews. EOIR provided data from a nationwide database on the results of the negative credible fear reviews conducted by the immigration judges. Also, we reviewed the immigration judges' worksheets, for all cases in which they vacated asylum officers' negative credible fear determinations, for the period April 1, 1997, to August 31, 1997.

To determine, in part, whether it was documented that asylum officers followed certain credible fear determination processes, we reviewed all 84 files of negative credible fear determinations for the months of May through July, 1997.

In addition, during our field visits we observed inspectors processing 16 aliens through the expedited removal process, asylum officers conducting 9 credible fear interviews, and immigration judges holding 5 negative credible fear reviews in Miami, the only location where reviews were conducted at the time of our visit.

We also met and/or talked with various nongovernmental organizations (e.g., American Bar Association, Lawyers Committee for Human Rights, Lawyers' Committee for Civil Rights of the San Francisco Bay Area, Office of the United Nations High Commissioner for Refugees, Amnesty International, and American Civil Liberties Union) to discuss our methodology and to get input on the types of data we should collect through these observations and file reviews. Officials from these organizations provided information on their concerns about the expedited removal process, including credible fear determinations, and provided information about specific problems they said were encountered by aliens during the process.

To describe INS' controls to monitor and oversee the expedited removal process, including credible fear determinations, we interviewed INS officials at headquarters and locations we visited and obtained data related to these activities.

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More details on our objectives, scope, and methodology are in appendix II of this report. Also included in appendix II is a description of the databases we used and our efforts to assess these databases' reliability.

We did our review from November 1996 to March 1998 in accordance with generally accepted government auditing standards.

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## **Agency Comments**

We provided a draft of this report to the Attorney General for review and comment. On March 16, 1998, we met with Department of Justice officials, including INS' Director, International Affairs, to obtain Justice's comments. Overall, the officials stated that the report was accurate and fair. They also provided technical comments, which have been incorporated in this report where appropriate.



# The Exclusion and Expedited Removal Processes

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The 1996 Act significantly changed INS' authority over the removal of aliens requesting admission to the United States at ports of entry. Previously, aliens could have a hearing before an immigration judge and could appeal an immigration judge's decision ordering their exclusion from this country through BIA and the federal courts. The scope of the federal court's review was limited to whether the government followed established procedures.

Generally, under the 1996 Act, aliens who attempt to enter the United States by engaging in fraud or misrepresentation or who arrive without proper documents are subject to an expedited removal order from an INS inspector that the alien cannot appeal. The penalty for inadmissible aliens, including those subject to expedited removal, generally increased from the aliens' being prohibited from entry in the United States for 1 year in the pre-1996 Act exclusion process to being prohibited from entry for 5 years under the post-1996 Act expedited removal process. Furthermore, inspectors have added responsibility to identify aliens who have a fear of returning to their home country. Under the expedited removal process, INS has established more specific procedures to guide inspectors than it had in the exclusion process used before the 1996 Act. Finally, the inspections component of the expedited removal process has more steps for INS inspectors than the exclusion process had and, therefore, INS estimated it generally took more of the inspectors' time than the exclusion process did at the locations we visited.

INS implemented the expedited removal process by issuing regulations as well as specific guidance and training for its staff who would be responsible for carrying out the process. Between April 1, 1997, and October 31, 1997, INS data showed that 29,170 aliens went through the expedited removal process, including 1,396 aliens who were referred for a credible fear interview with an asylum officer. Documentation in the INS files that we reviewed at five locations showed some inconsistencies as to whether inspectors and supervisors were documenting that they followed various steps in INS' expedited removal process, such as signing key forms and asking required questions. INS staff also have reviewed files and found that INS inspectors and supervisors were not always documenting that they followed INS procedures. INS officials told us that they have reinforced with inspectors the need for proper documentation.

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## The Exclusion Process

Before the implementation of the 1996 Act, aliens could be formally ordered removed only by an immigration judge through an exclusion hearing. If inspectors found that an alien was not admissible into this

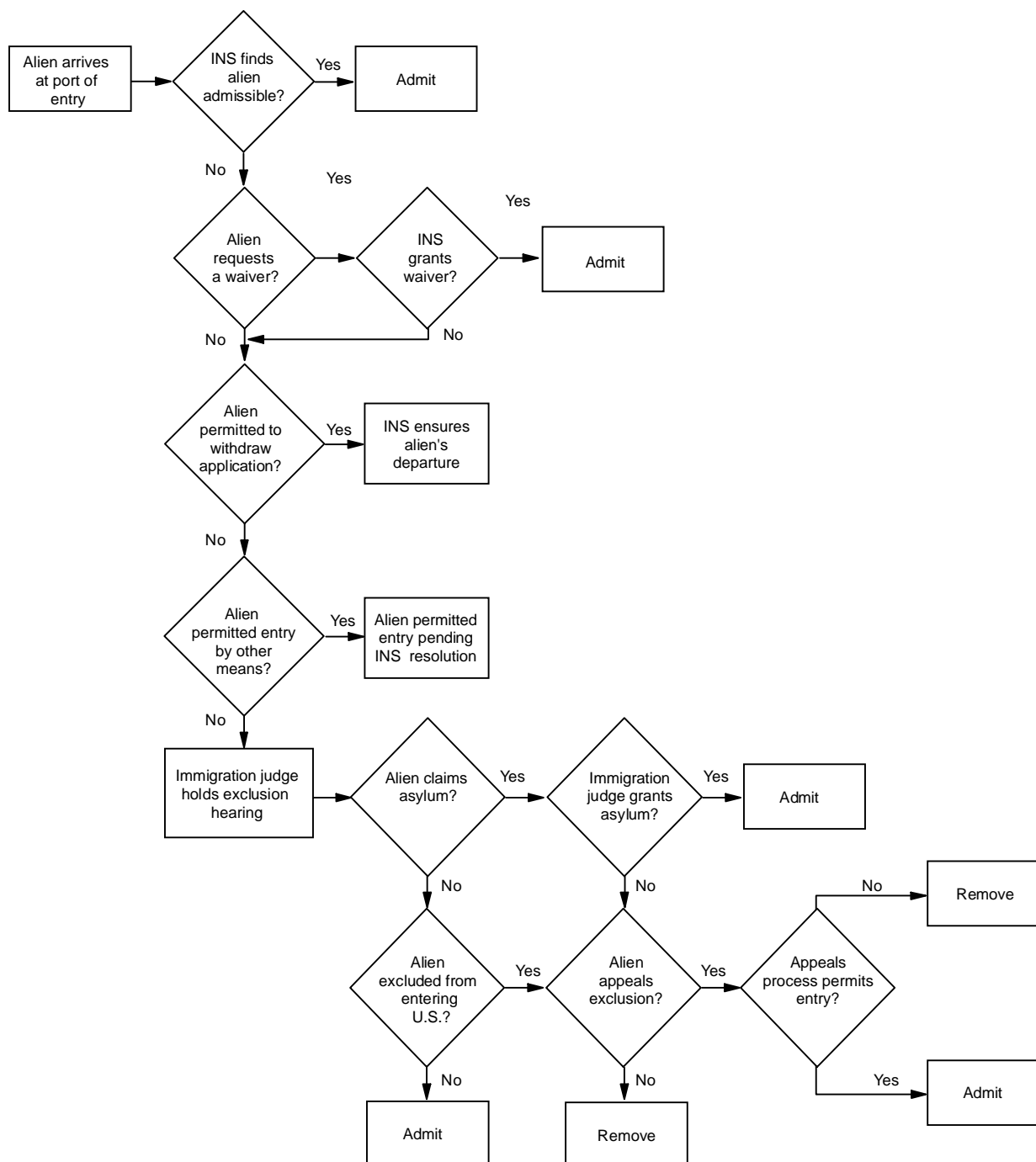
country, options available to the inspector included allowing the alien to withdraw his or her application for admission and voluntarily depart, processing a waiver of inadmissibility, deferring the inspection, paroling the alien into the United States (i.e., a procedure used to temporarily admit an excludable alien into the country for emergency reasons or when in the public interest), or preparing the case for an exclusion hearing.<sup>1</sup> Figure 2.1 shows a flowchart of the exclusion process that was used before the 1996 Act.

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<sup>1</sup>Appendix III contains INS data for fiscal years 1992 to March 31, 1997, on the number of aliens requesting admittance into the United States and the number of aliens not admitted. For those aliens not admitted, we provided the numbers that were (1) allowed to withdraw their application or were refused entry; (2) paroled; (3) allowed a deferred inspection; and (4) referred to an immigration judge.

**Chapter 2**  
**The Exclusion and Expedited Removal**  
**Processes**

**Figure 2.1: Flowchart of the Exclusion Process Used Before April 1, 1997**



(Figure notes on next page)

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Sources: Information provided in discussions with INS officials and review of INS documentation.

As shown in the flowchart in figure 2.1, aliens who were denied admission by INS could request an exclusion hearing before an immigration judge. At these exclusion hearings, aliens were to be afforded the following due process procedures:

- be represented by counsel at no expense to the government;
- be informed of the nature, purpose, time, and place of the hearing;
- present evidence and witnesses in their own behalf;
- examine and object to evidence against them;
- cross-examine witnesses presented by the government;
- request the immigration judge to issue subpoenas requiring the attendance of witnesses and/or the production of documentary evidence; and
- appeal the immigration judge decisions to BIA and the federal courts.

At the exclusion hearing, the burden of proving admissibility generally rested with the alien. INS would present evidence and examine and cross-examine the alien and witnesses. At the end of the hearing, the judge would render a decision, such as (1) exclude the alien (i.e., not allow him/her to enter the United States); (2) grant the alien relief from exclusion (i.e., allow the alien to enter this country); or (3) permit the alien to withdraw his or her application for admission (i.e., allow the alien to voluntarily leave the country).<sup>2</sup>

Either the alien or INS (or both) could appeal the immigration judge's decision to BIA. If BIA upheld the judge's decision to exclude the alien, the alien could appeal BIA's decision to a U.S. district court.<sup>3</sup> The district court's review was limited to determining if the government followed established procedures (e.g., that a fair hearing was held, that INS followed its regulations, and that the immigration judge's decision was supported by the record). The alien then could appeal an adverse district court decision to the U.S. Circuit Court of Appeals and, ultimately, to the U.S. Supreme Court. If an alien were found to be excludable after the final legal action was completed, INS was to arrange for the alien's removal from this

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<sup>2</sup>See appendix IV for information related to exclusion cases that EOIR received from INS between October 1, 1995, and March 31, 1997, for aliens charged with attempting to enter the United States by engaging in fraud or misrepresentation or arriving without proper documents.

<sup>3</sup>The appeal would be under a habeas corpus proceeding (i.e., a writ to bring a person in custody before the court to determine the legality of the custody).

country. Aliens removed under this process generally were to be barred from reentering the United States for 1 year.

To provide some perspective on the disposition of aliens prior to April 1, 1997, who could have been subjected to expedited removal if they had attempted entry into this country after April 1, 1997, we obtained INS data for the three airports we visited. The airports' databases captured up to three charges as the basis for exclusion. Table 2.1 shows the disposition of aliens who were not admitted into this country between October 1, 1995, and March 31, 1997, because at least one of the reasons for their inadmissibility was that they attempted to enter the United States by engaging in fraud or misrepresentation or arriving without proper documents—the only charges for which aliens can be subject to expedited removal. The majority of the aliens denied entry into this country at these three airports were sent to immigration judges for exclusion hearings. INS' options for those aliens who were not sent to an immigration judge for an exclusion hearing included permitting the alien to withdraw his or her application or waiving or paroling the alien into the United States. We used the data from the three airports because INS did not have a nationwide database on excluded aliens by charge.

**Table 2.1: INS Disposition Data for Aliens Who Attempted to Enter by Engaging in Fraud or Misrepresentation or Who Arrived Without Proper Documents, October 1, 1995, to March 31, 1997**

<b>Airport</b>	<b>Aliens denied entry</b>	<b>Aliens withdrew application</b>	<b>Other action<sup>a</sup></b>	<b>Aliens sent to exclusion hearing</b>	<b>Percentage of aliens sent to exclusion hearings</b>
JFK	6,187	2,166	949	3,072	50
Los Angeles <sup>b</sup>	1,292	350	23	919	71
Miami	7,007	2,570	495	3,942	56

<sup>a</sup>"Other action" column includes the number of aliens detained and turned over to another law enforcement agency and aliens who were granted waivers or were paroled into the United States. These aliens were not considered to have entered the country and, therefore, were subject to exclusion provisions of the INA.

<sup>b</sup>Data were missing for July 1996 and September 1996.

Source: GAO analysis of INS' Record of Intercepted Passenger System data.

## The Expedited Removal Process

Under the 1996 Act, on behalf of the Attorney General, the Commissioner of INS carries out the responsibilities to issue expedited removal orders against aliens classified as "arriving aliens." Justice regulations have

defined arriving aliens as those aliens who seek admission to or transit through the United States at a port of entry<sup>4</sup> or who are interdicted in international or United States waters and are brought to this country. The 1996 Act also allows expedited removal orders to be issued to aliens who have entered the United States without being inspected or paroled at a port of entry.<sup>5</sup> INS determined that, at least initially, it would not apply expedited removal orders to the last category of aliens—namely, those who entered the United States without inspection or parole. The specific violations (i.e., aliens attempting to enter the United States by engaging in fraud or misrepresentation or arriving without proper documents) under the 1996 Act that could subject the alien to an expedited removal order are discussed in appendix V.

The 1996 Act defines when INS can use expedited removal orders for arriving aliens. As discussed below, INS has established procedures for implementing the new provisions, such as requiring inspectors to read specific information to the aliens. Figure 2.2 shows the expedited removal process, including the credible fear process. In comparing figure 2.1 on the exclusion process with figure 2.2 on the expedited removal process, the expedited removal process for aliens who do not express a fear of being returned to their home country is more streamlined than the exclusion process. However, the expedited removal process for aliens who express a fear of being returned to their home country contains more steps than the exclusion process.

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<sup>4</sup>The 1996 Act excludes from expedited removal Cuban nationals who arrive at a port of entry by aircraft.

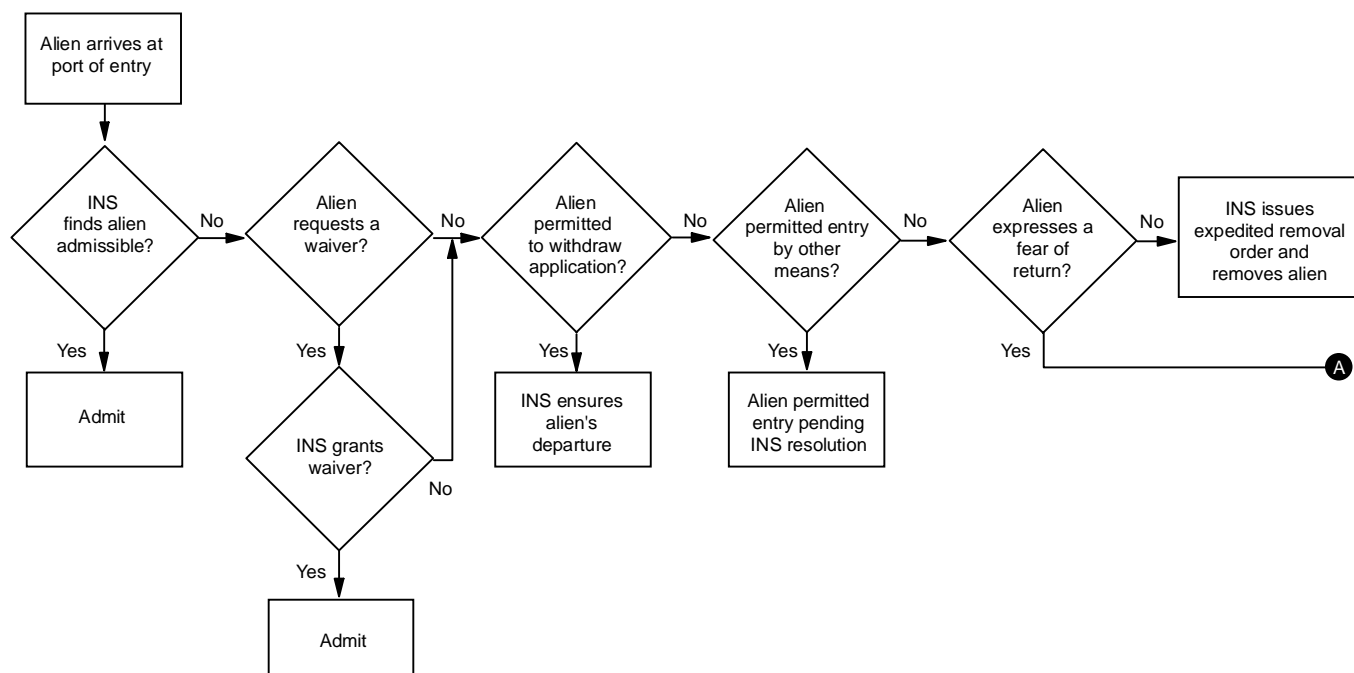
<sup>5</sup>The 1996 Act only permits INS to issue expedited removal orders against aliens who have been in the United States for less than 2 years.

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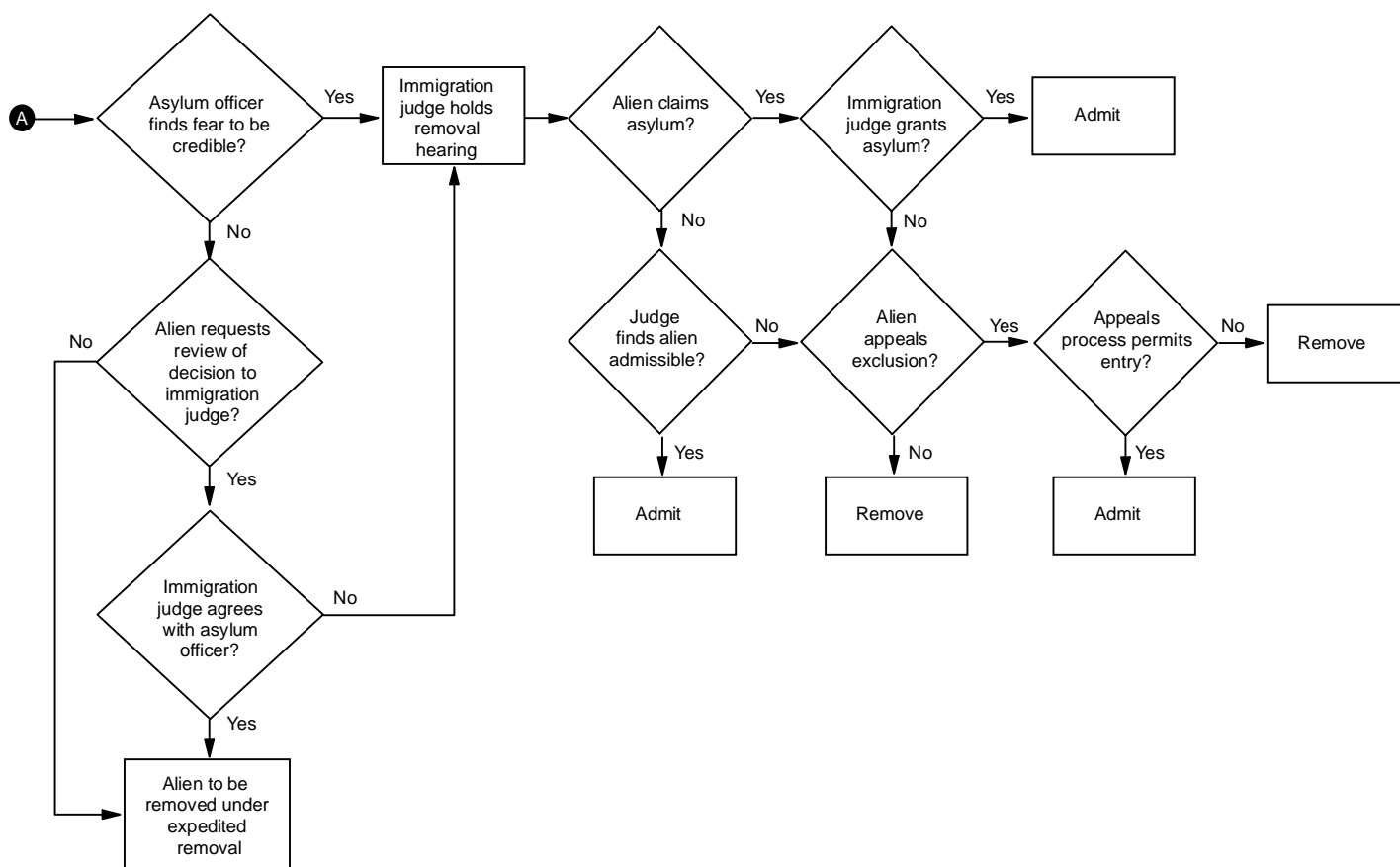
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Figure 2.2: Flowchart of the Expedited Removal Process Under the 1996 Act





## Chapter 2 The Exclusion and Expedited Removal Processes



Note: Withdrawals can also occur at later stages in the expedited removal process.

Sources: Information provided in discussions with INS officials and review of INS documentation.

### Steps in the Expedited Removal Process

According to INS' regulations and implementing instructions, when an inspector plans to issue an expedited removal order to an alien, the inspector is to follow certain steps, as shown below:

- Explain the expedited removal process to the alien and read the statement of rights and consequences in a language the alien can understand. Included in this statement are the facts that the alien may be immediately removed from this country without a hearing and, if so, may be barred from reentering for 5 years or longer; that this may be the alien's only opportunity to present information to the inspector before INS makes a decision; and that if the alien has a fear or concern about being removed from the United States or being sent to his or her home country, the alien should tell the inspector during this interview because the alien may not have another chance to do so.
- Take a sworn statement from the alien, which is to contain all pertinent facts of the case. As part of the sworn statement process, the inspector provides information to the alien, interviews the alien, and records the alien's responses. The inspector is to cover and document in the sworn statement such topics as the alien's identity and reasons for the alien being inadmissible into the United States; whether the alien has a fear of persecution or return to his or her home country; and the INS decision (i.e., issue the alien an expedited removal order, refer the alien for a credible fear interview, permit the alien to withdraw his or her application for admission, admit the alien, allow him or her to apply for any applicable waiver, or defer the inspection or otherwise parole the alien).

When the inspector completes the record of the sworn statement, he or she is to have the alien read the statement, or have it read to the alien, and have the alien sign and initial each page of the statement and any corrections that are made. The inspector is to provide a copy of the signed statement to the alien. The alien is to be given an opportunity to respond to INS' decision. (See app. VI for a copy of the form used to record the alien's sworn statement.)

- Complete other administrative processes and paperwork, including the documents needed to remove the alien.
- Present the sworn statement and all other related paperwork to the appropriate supervisor for review and approval.

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## **Need to Identify Potential Asylum Seekers**

According to INS instructions, the inspector is to refer an alien for an interview with an asylum officer if, for example, the alien indicates a fear of returning to his or her home country or an intent to apply for asylum. The asylum officer is to determine if the alien has a credible fear of persecution. Immigration officers referred 1,396 aliens who requested admittance to the United States between April 1, 1997, and October 31,

1997, for a credible fear interview. The process for determining whether aliens have a credible fear is discussed in chapter 3.

According to INS, to determine if an alien should be referred to an asylum officer for a credible fear interview, the inspector is to consider any statement or signs, verbal or nonverbal, that the alien may have a fear of persecution or a fear of returning to his or her home country. The questions that the inspector is required to ask and to record were designed to help determine whether the alien has such a fear. These questions are as follows:

- Why did you leave your home country or country of last residence?
- Do you have any fear or concern about being returned to your home country or being removed from the United States?
- Would you be harmed if you are returned to your home country or country of last residence?

According to INS guidance, if the alien indicates he or she has a fear or concern or intends to apply for asylum, the inspector may ask additional questions to ascertain the general nature of the alien's fear or concern. The alien does not need to use the specific terms "asylum" or "persecution" for the inspector to refer the alien for a credible fear interview, nor does the alien's fear have to relate specifically to one of the five bases contained within the definition of refugee, which are the legal basis for an asylum determination.<sup>6</sup> INS training materials note that there have been many cases for which asylum was ultimately granted that may not have initially appeared to relate to the definition of asylum. INS further requires that the inspector should not make eligibility determinations or weigh the strengths or credibility of the alien's claim. Additionally, the inspector should err on the side of caution and refer to the asylum officer any questionable cases.

If the alien asserts a fear or concern that is clearly unrelated to an intention to seek asylum or a fear of persecution, then the inspector should not refer the case to an asylum officer. During our observations, we saw an instance where an alien initially expressed a fear of removal during a sworn statement for which the inspector did not refer the alien for a credible fear interview. The alien expressed concern about not being able to see her boyfriend who lived in the United States. The inspector checked

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<sup>6</sup>As discussed in chapter 3, for an asylum officer to find that the alien has a credible fear of persecution, the alien's fear must be related to one of the five bases (or grounds) listed in the refugee definition.

with the supervisor to make sure that she should not refer this alien for a credible fear interview.

When an inspector is going to refer an alien for a credible fear interview, the inspector is to process the alien as an expedited removal case.<sup>7</sup> Additionally the inspector is to explain to the alien in a language the alien understands information about the credible fear interview including (1) the alien's right to consult with other persons, (2) the alien's right to have an interpreter, and (3) what will transpire if the asylum officer finds that the alien does not have a credible fear of persecution. This information is contained in an INS form that the inspector is to give the alien (see app. VI for a reprint of this form). The inspector also is to provide the alien with a list of free legal services, which is prepared and maintained by EOIR.

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### **Removal of Aliens Served an Expedited Removal Order**

Generally, INS requires that aliens who are subject to expedited removal should be processed immediately unless they claim lawful status in the United States or a fear of return to their home country. Those aliens who arrive at air and sea ports of entry who are to be removed from the United States are to be returned by the first available means of transportation. Aliens arriving at land ports of entry who are ordered removed usually should be returned to Canada or Mexico. If the inspector is unable to complete the alien's case or transportation is not available within a reasonable amount of time from the completion of the case, the inspector is to send the alien to an INS detention center or other holding facility until he or she can complete the case or remove the alien. Parole may only be considered on a case-by-case basis for medical emergencies or for legitimate law enforcement purposes.<sup>8</sup>

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### **Other Options Available in Lieu of Expedited Removal**

An expedited removal order is not the only option available for the inspector to apply to aliens who are inadmissible because they attempted to enter the United States by engaging in fraud or misrepresentation or arrived without proper documents. Similar to the exclusion process, which was in place before April 1, 1997, depending upon the specific violation, the options available to the inspector include (1) allowing the alien to withdraw his or her application, (2) processing a waiver, (3) deferring the

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<sup>7</sup>The expedited removal order is not issued at this time.

<sup>8</sup>A legitimate law enforcement purpose could include paroling the alien into the custody of another law enforcement agency for prosecution of the alien or for having the alien testify or assist the government in the prosecution of a criminal matter.

inspection, or (4) paroling the alien into the United States.<sup>9</sup> However, INS can no longer refer these aliens to an immigration judge unless the alien is found to have a credible fear of persecution or the alien swears under oath to be an U.S. citizen or to have lawful permanent residence, refugee, or asylee status, but the inspector cannot verify that claim.<sup>10</sup>

On December 22, 1997, INS issued additional guidance on when an inspector should offer aliens an opportunity to withdraw their application for admission. According to this guidance, the inspector should carefully consider all facts and circumstances related to the case to determine whether permitting withdrawal would be in the best interest of justice, or that justice would be ill-served if an order of removal (such as an expedited removal order) were issued. Factors to consider in making this decision may include, but are not limited to, previous findings of inadmissibility against the alien, the alien's intent to violate the law, the alien's age or health, and other humanitarian or public interest considerations. The guidance further states that ordinarily, the inspector should issue an expedited removal order when the alien has engaged in obvious, deliberate fraud. If the alien may have innocently or through ignorance, misinformation, or bad advice obtained an inappropriate visa and did not conceal information during the course of the inspection, withdrawal should ordinarily be permitted.

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## Differences Between the Exclusion and Expedited Removal Processes

The 1996 Act and its implementation affected the immigration proceedings in numerous ways. Two major differences between the exclusion and expedited removal processes are INS' authority to issue the expedited removal order and the aliens' limited right of review of that order. Other changes include (1) an increased penalty for inadmissible aliens, including those subject to expedited removal; (2) a more structured inspection process for expedited removal than for exclusion; and (3) estimated additional time taken by inspectors to complete the expedited removal process due to the additional steps in the process.

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## Limited Review of Inspectors' Decisions

Before the 1996 Act, aliens who attempted to enter the United States by engaging in fraud or misrepresentation or who arrived without proper

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<sup>9</sup>INS did not have data readily available on the number of aliens subject to expedited removal who were offered one of the four options.

<sup>10</sup>The inspector is to issue these aliens an expedited removal order and refer them to an immigration judge to review the order. If the immigration judge determines the alien has never been admitted as a lawful permanent resident or as a refugee, has not been granted asylum status, or is not an U.S. citizen, INS is to remove the alien. The immigration judge's decision is not appealable. If the judge determines the alien was admitted as a lawful permanent resident or as a refugee, was granted asylum status, or is an U.S. citizen, the judge is to cancel the expedited removal order.

documents could have received a hearing by an immigration judge to determine if the aliens should be allowed to enter the United States. The aliens could apply for asylum during this hearing. Furthermore, aliens had the right to appeal to BIA the immigration judge's decision not to allow them to enter the country. Aliens could appeal an adverse decision by BIA through the federal courts. However, the scope of the federal courts' review was limited to whether the government followed established procedures. Under the 1996 Act, inspectors, as opposed to immigration judges, can issue aliens expedited removal orders if they attempt to enter the United States by engaging in fraud or misrepresentation or arrive without proper documents.<sup>11</sup> Generally, aliens who do not express a fear of being returned to their home country cannot have a review of the INS' decisions.<sup>12</sup> In addition, inspectors are to look for signs from the aliens of fear of being returned to their home country and, if aliens exhibit such a fear, inspectors are to refer the alien to an asylum officer for a credible fear interview.

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## Increased Penalties

Before the 1996 Act, aliens who were issued a formal exclusion order generally were barred from reentering the United States for 1 year. With the implementation of the 1996 Act, the reentry restriction for inadmissible aliens, including those subject to expedited removal, generally increased to 5 years. Aliens are allowed to request permission to reapply for admission to this country during the 5-year period.<sup>13</sup>

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## More Formal Inspection and New Credible Fear Process

Under the exclusion process, INS had general procedures for its inspectors to follow when referring aliens to an immigration judge. For example, INS guidance stated that inspectors should make every effort to establish the grounds of inadmissibility, including taking a formal question and answer statement from the alien, if necessary. Under the expedited removal process, INS requires the inspectors to follow specific steps. (For information on steps in the expedited removal process, see the previous discussion.)

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<sup>11</sup>Inspectors are to complete expedited removal orders for aliens who claim to be lawful permanent residents, refugees, asylees, or U.S. citizens. Orders in these cases are to be reviewed by an immigration judge. For aliens who express a fear of returning to their home countries, inspectors are to fill in a portion of the expedited removal orders; these orders are not completed unless the asylum officer determines the fear is not credible.

<sup>12</sup>Aliens can request an immigration judge's review of an inspector's decision if the alien swears under oath to be an U.S. citizen or to have lawful permanent residence, refugee, or asylee status. If the judge finds that the alien is not an U.S. citizen or does not have lawful permanent residence, refugee, or asylee status, then the alien will be subject to expedited removal.

<sup>13</sup>The 1996 Act also increased the penalties for aliens who were removed under other provisions of the law.

The expedited removal process also added new procedures for asylum officers to follow in determining whether aliens have a credible fear of persecution and, therefore, should not be immediately removed under the new process. These procedures are discussed in chapter 3.

### INS Estimates That Expedited Removal Cases Have Taken More INS Staff Time to Complete Than Exclusion Cases

For the five INS field units we reviewed, INS estimates of average inspection-related adjudication time generally show that the time it took an inspector at secondary inspection to complete an expedited removal case was greater than the average time it took to complete an exclusion case for aliens who attempt to enter the United States by engaging in fraud or misrepresentation or who arrive without proper documents, as shown in tables 2.2 and 2.3. According to an INS official, the differences in inspectors' time between the two processes are due, in part, to the additional steps associated with the inspection components of the expedited removal process.

The time for inspectors and supervisors to prepare a case in secondary inspection includes interviewing the alien and preparing and reviewing the paperwork related to an exclusion hearing or an expedited removal order. Because the methods each office used to develop its estimates varied, the data are not comparable among the locations.

The estimated times presented in tables 2.2 and 2.3 represent cases where interpreters were not used. Officials at some of the ports told us that the use of an interpreter increased the amount of time the inspector spent on the case from 1/2 hour to 1-1/2 hours. We obtained estimates from the four ports of entry and the Buffalo district.

**Table 2.2: INS Inspectors' and Supervisors' Estimated Average Adjudication Time per Exclusion Case, by Location**

Location	Estimated average time per exclusion case	
	By inspector	By supervisor <sup>a</sup>
Buffalo district	3 hours	40 minutes
JFK airport	3 hours	45 minutes
Los Angeles airport	3 hours	1 hour, 30 minutes
Miami airport	5 hours, 48 minutes	1 hour, 50 minutes
San Ysidro	2 hours, 15 minutes	11 minutes

<sup>a</sup>This column combines the estimated time by the first-line and second-line supervisors at each location. The Miami figure also includes the estimated time by the area supervisor.

Source: INS field offices.

**Table 2.3: INS Inspectors' and Supervisors' Estimated Average Adjudication Time per Expedited Removal Case, By Location**

Location	Estimated average time per expedited removal case			
	No credible fear referral		Credible fear referral	
	By inspector	By supervisor <sup>a</sup>	By inspector	By supervisor <sup>a</sup>
Buffalo district	5 hours	1 hour, 15 minutes	6 hours	1 hour, 15 minutes
JFK airport	3 hours, 30 minutes	45 minutes	4 hours, 30 minutes	45 minutes
Los Angeles airport	3 hours	1 hour, 30 minutes	4 hours	2 hours, 30 minutes
Miami airport	6 hours, 22 minutes	20 minutes	6 hours, 22 minutes	20 minutes
San Ysidro	2 hours, 11 minutes	11 minutes	3 hours, 30 minutes	11 minutes

<sup>a</sup>This column combines the estimated time by the first-line and second-line supervisors at each location. The Miami figure also includes the estimated time by the area supervisor.

Source: INS field offices.

The estimated time used by INS inspectors on the exclusion and expedited removal processes are not comparable because of the differences between the two processes. Also, the 1996 Act established a new credible fear referral process for inspectors. In addition, while some locations estimated that the expedited removal process takes more inspection time, the process has reduced options for aliens to appear before an immigration judge and federal courts regarding an INS removal decision. Times involved in those steps of the pre-1996 Act process were not included in our analysis.

## Implementation of the Expedited Removal Process

To implement the expedited removal process, INS developed operating instructions and planned to provide training to all of its immigration and asylum officers. INS' and EOIR's estimated cost to implement the expedited removal process was about \$4.8 million. The five ports of entry we visited developed port-specific methods to implement INS' process. Between April 1, 1997, and October 31, 1997, 29,170 aliens, including 1,396 aliens referred for credible fear interviews (discussed in ch. 3), were processed under the expedited removal process.

Documentation in the files we reviewed at the locations we visited showed mixed results as to whether inspectors and supervisors were consistently documenting that they followed various steps in INS' expedited removal process. For the steps we reviewed, the files indicated a range of



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compliance from an estimated 80 to 100 percent. In addition, at the locations we visited, INS was generally removing aliens to whom it issued expedited removal orders within a few days. INS officials at the locations we visited said that they had not encountered any changes in cooperation from countries and air carriers when removing aliens through the expedited removal process.

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## **Guidance and Training**

On January 3, 1997, INS issued proposed rules regarding the implementation of the 1996 Act, including the expedited removal process. On March 6, 1997, INS issued its interim rules. These interim rules are to remain in effect until INS publishes final rules.

INS developed and distributed specific guidance for its inspectors on how to implement the expedited removal process. This guidance was incorporated into the training that INS developed for its officers on the 1996 Act. The training information on the expedited removal process included instructions on who would be subject to expedited removal, what information should be obtained in a sworn statement, and when to refer an alien to an asylum officer for a credible fear interview. According to INS, it trained about 16,400 of its staff. INS has modified its existing training for newly hired employees to include the expedited removal process.

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## **Estimated Cost to Start Up the Expedited Removal Process**

The 1996 Act required INS and EOIR to implement a number of changes, including the expedited removal process. To identify the cost of implementing only the expedited removal process, which includes the credible fear determination procedures, we asked INS and EOIR to provide data on the cost of getting policies and procedures in place and providing training on the new process and procedures. We asked the offices to limit their estimates to the start-up costs incurred to implement the procedures. The data collected included estimated costs for (1) salary and benefits of employees who worked full- and part-time on the implementation or who took the training; (2) travel; (3) materials and supplies; (4) office space and facilities; and (5) goods and services received (including the use of outside consultants). As shown in table 2.4, the estimated cost to implement the expedited removal process was about \$4 million for INS and about \$700,000 for EOIR. These estimated costs basically represent one-time costs associated with starting the expedited removal process for INS and EOIR.

**Table 2.4: Estimated Start-Up Costs for Expedited Removal and Credible Fear Processes**

	INS		EOIR	
	Number of staff	Cost <sup>a</sup>	Number of staff	Cost <sup>a</sup>
<b>Implementation costs</b>				
Staff salaries and benefits:				
Staff who worked full-time on implementation	15	\$344,600	21	\$158,500
Staff who worked part-time on implementation	397	1,515,000	58	106,000
Staff who received training	16,401	1,171,800	445	175,000
Travel and per diem	•	469,000	•	137,300
Materials, office space, goods, and services	•	603,800	•	121,500
<b>Total</b>	<b>•</b>	<b>\$4,104,200</b>	<b>•</b>	<b>\$698,300</b>

<sup>a</sup>Figures rounded to the nearest \$100.

Note: These costs were incurred through June 30, 1997.

Sources: INS and EOIR estimates.

## Aliens Processed Through the Expedited Removal Process

According to INS data, about 7 percent of the aliens who attempted entry between April 1, 1997, and October 31, 1997, and who were not admitted at ports of entry, were processed under the expedited removal process (27,774 of 395,335 aliens). Table 2.5 shows the number of aliens who requested entry between April 1, 1997, and October 31, 1997, and who entered the expedited removal process (but were not referred for a credible fear interview). Of the 27,774 cases<sup>14</sup> in which aliens were processed under expedited removal, 27,345 (98.5 percent) had been closed as of December 15, 1997. In 99.6 percent of the 27,345 cases that were closed, the alien was removed after receiving a removal order.

<sup>14</sup>This number represents aliens who were processed through the expedited removal process but were not referred for a credible fear interview. It is not necessarily 27,774 different aliens, because an alien may have attempted entry more than once during this time frame and may have been subject to expedited removal more than once. Subsequent removals subject aliens to a longer reentry bar.

**Table 2.5: Cases of Aliens Who Entered the Expedited Removal Process, Both Nationwide and at Locations We Visited, April 1, 1997, to October 31, 1997**

<b>Location</b>	<b>Number of aliens charged under the expedited removal process<sup>a</sup></b>
Nationwide	27,774
Buffalo district	197
San Ysidro	11,833
JFK airport	902
Los Angeles airport	346
Miami airport	1,036

Note: Data as of December 15, 1997. The data for the airports include cases for aliens entering through seaports in those locations.

<sup>a</sup>These figures represent the number of cases that inspectors at secondary inspection processed as expedited removal cases. They do not include the number of cases that were referred for a credible fear determination interview or for a legal status claim review. During this period, there were another 90 cases for aliens referred for a legal status claim review; 1,396 cases for aliens referred for a credible fear interview.

Source: GAO analysis of INS Deportable Alien Control System data and Asylum Pre-Screening Officer database.

More detailed information on the characteristics of aliens who were processed under the expedited removal process is provided in appendix VII.

The following are some examples from our case file reviews at the ports we visited of reasons inspectors found aliens inadmissible and subject to the expedited removal process: the alien had previously overstayed his or her visa; the alien intended to work in the United States but did not have the proper documents to allow him or her to do so; and the alien had a counterfeit border crossing card or resident alien card.

## Port-Specific Implementation of the Expedited Removal Process

In addition to the national guidance, three approaches for implementing the expedited removal process were employed by the five ports of entry we visited.

- INS' Miami airport approach had a separate unit of inspectors to handle the expedited removal cases. If an alien was sent from primary inspection to secondary inspection and the inspector at secondary determined the alien was subject to expedited removal, the inspector was to refer the alien to the specific unit handling expedited removal cases. The expedited removal unit was staffed by inspectors and supervisors at the GS-11 level and

above. These inspectors were to take the sworn statement and complete other paperwork related to the expedited removal case.

- At the San Ysidro port, INS used a three-step approach. First, when an alien admitted to the inspector at secondary that he or she presented a malafide (e.g., fraudulent) application for entry, the inspector was to send the alien to an enforcement team for processing. The enforcement team that handled the expedited removal cases was comprised of inspectors and supervisors at the GS-7 to GS-12 level. Second, among other things, the team was to show the aliens a Spanish-language video tape explaining the expedited removal process. The sworn statements were not taken at the port of entry unless the aliens expressed a fear of returning to their home country. Third, the women were to be transported to a local motel that is used for temporary detention, and the males were to be transported to the El Centro Service Processing Center. At these sites, an enforcement team member was to take the aliens' sworn statements, complete the paperwork, and serve the aliens with the expedited removal order. The aliens were to be detained at these locations until their removal.
- The Niagara Falls land port (which consisted of three bridges), JFK airport, and Los Angeles airport did not establish a separate unit to process expedited removal cases. At these locations, an inspector was to send an alien from primary inspection to secondary inspection, where the inspector was to determine if the alien was subject to expedited removal and, if so, was to complete the case.

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### **Case File Documentation Indicated Inconsistent Compliance With INS Procedures**

We reviewed the case files on 434 aliens who attempted entry at the five locations between May 1, 1997, and July 31, 1997, and who were charged under the expedited removal provision but were not referred for a credible fear interview. For the Buffalo district, we reviewed all files and for the other four locations we randomly selected case files for review. Our review showed that the documentation in the case files at the five locations we visited indicated inconsistent compliance with the procedures. See appendix II for information on the case file review methodology and the calculation of the sampling error.

As part of the case file review, we determined whether (1) the inspectors documented in the sworn statement that they asked the aliens the three required questions designed to identify a fear of returning to their home country, (2) the aliens signed the sworn statements, and (3) the supervisors reviewed the expedited removal orders. Documentation on compliance varied among the locations.

Regarding asking the three required questions, our case file review of the documentation showed that inspectors at Miami airport documented that they asked the required questions an estimated 100 percent of the time. At the other four locations the results were less consistent: the case files indicated that inspectors did not document asking at least one of the three required questions, or some version thereof, between an estimated 1 and 18 percent of the time. For example, the documentation in the case files showed that inspectors did not record asking the required question “Why did you leave your home country or country of last residence?” (or some version thereof) an estimated 18 percent of the time at Los Angeles airport, 15 percent of the time in San Ysidro, 5 percent of the time in the Buffalo district, and 2 percent of the time at JFK airport. In addition, the case file documentation showed that the inspectors did not record asking the required question “Do you have a fear or concern about being returned to your home country or being removed from the United States?” (or some version thereof) an estimated 3 percent of the time at Los Angeles, 2 percent of the time in San Ysidro and at JFK airport, and 1 percent of the time in the Buffalo district. In the 434 files we reviewed, we found 6 cases involving 4 locations in which the inspector did not document asking any of the 3 required questions on fear.

According to one of its members, INS’ Expedited Removal Working Group<sup>15</sup> also has identified cases in which inspectors did not ask these required questions. She said that the failure to ask the questions generally occurred when the inspectors were using a draft version of the sworn statement, which had a different version of the required questions. As the Working Group became aware of this problem at specific ports of entry, the official said that she informed port officials of the importance of asking these questions and documenting that they were asked and sent the ports of entry the correct version of the sworn statement.

In addition to our file reviews, we observed secondary inspectors’ handling of 16 cases of aliens who were subject to expedited removal. In 15 cases, the inspectors asked applicants the required fear of return questions. In one case the inspector asked two of the three required questions. In five cases the applicants expressed a fear of return. In three of the cases, the inspectors referred the aliens to an asylum office for a credible fear interview. In the other two cases, the aliens initially expressed a fear. In one of the two cases, the alien recanted his fear. In the second case, the alien expressed concern about not being able to see her

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<sup>15</sup>The Working Group oversees the implementation of the expedited removal process. See chapter 4 for a description of the Working Group’s members and functions.

boyfriend who lived in the United States. The inspector checked with the supervisor to make sure that she should not refer this alien for a credible fear interview.

Furthermore, for almost all the cases we reviewed, the files contained sworn statements signed by the aliens. For the five locations, the files indicated that aliens signed the statements between an estimated 97 and 100 percent of the time.

Lastly, in our case file review at five locations, the documentation showed that the range in which supervisors documented that they reviewed the expedited removal orders was from an estimated 80 to 100 percent. At two of the locations, documentation in the files showed that a supervisor reviewed all of the orders. In addition, INS' Office of Internal Audit (OIA) conducted reviews of field unit operations, including expedited removal. Its first audit that included the expedited removal process covered the activities of the Newark District Office and was conducted between April 21 and May 2, 1997. OIA found that in 6 of the 27 cases, supervisors did not review and approve removal orders at the Newark International Airport. OIA recommended that the District Director require all removal orders issued by immigration officers be reviewed by a second-line supervisor and that an indication of the review be annotated on the form before its execution.<sup>16</sup>

A member of INS' Working Group said that, through the group's case file reviews, it has identified cases in which the documentation of supervisory reviews has been missing. She said that when the Working Group has identified this problem, it has informed relevant port officials of the problem. She also said that the Working Group has discussed the need for supervisory review and proper documentation of such review in its field visits and in written guidance distributed to the field.

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## **Aliens Generally Removed Within 2 Days**

On the basis of our file reviews of cases where aliens were not referred for a credible fear interview, for three of the locations (Los Angeles airport, Miami airport, and Buffalo district) we estimated that at least 95 percent of the aliens who received expedited removal orders were removed either the day they attempted to enter the United States or the day after. At JFK airport, an estimated 84 percent of such aliens were removed either the

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<sup>16</sup>INSpect, Final Report Newark District (97-02, Jan. 5, 1998). OIA also found that automated data systems related to expedited removal were not being updated in a timely manner. OIA recommended that the District Director implement procedures to ensure that all applicable data systems be updated in a timely manner.

same day or the day after they attempted to enter this country. We estimated that for the majority of the aliens who requested entry into this country through the San Ysidro land port of entry (90 percent), it took 2 or more days for them to be removed.

INS does not maintain nationwide data on the cooperation of foreign countries and air carriers in accepting aliens who were removed under the expedited removal provision. We asked INS officials at the locations we visited if they had problems with air carriers or countries accepting such aliens since April 1, 1997. INS officials said that air carrier cooperation had not been a problem. They added that, generally, delays related to the air carriers have occurred only when there have been a limited number of available flights. Regarding country cooperation, INS officials at four locations said they have encountered problems returning aliens to certain countries. However, these problems also existed before April 1, 1997, and, therefore, were not unique to aliens who received expedited removal orders. Buffalo district officials said that the United States has an agreement with Canada whereby Canada will accept aliens whom the United States denies entry to this country at the U.S.-Canada border. Therefore, the officials said that the Buffalo district did not have problems returning to Canada aliens who received expedited removal orders.

# The Credible Fear Process

Aliens attempting to enter the United States who express to an INS inspector a fear of being returned to their home country are to be referred to an asylum officer for a credible fear interview. The purpose of the interview is to determine if aliens have a credible fear of persecution. The asylum officers are to read information to the alien about the credible fear process. If the asylum officer determines that the alien has a credible fear, the alien is referred to an immigration judge for a removal hearing. If the asylum officer finds that the alien does not have a credible fear, the alien can request that an immigration judge review the asylum officer's negative credible fear determination.

Asylum officers determined that 79 percent of the aliens who attempted to enter the United States from April 1 to October 31, 1997, for whom the officer had completed the credible fear interview, had a credible fear of persecution. On the basis of the documentation in our nationwide case file review and nine observations, the asylum officers read most of the required information to the aliens during the credible fear interviews. INS estimated the amount of time needed to process a credible fear case ranged between about 6 to 10 hours for the Los Angeles, Miami, and New York asylum offices. Nationwide, immigration judges affirmed INS' negative credible fear determinations about 83 percent of the time. EOIR estimated that the amount of time needed to complete a negative credible fear review was about 1 hour.

## The Credible Fear Process

As discussed in chapter 2, inspectors are to refer aliens who have expressed a fear of persecution to an asylum officer for a credible fear interview. Before holding the credible fear interview, asylum officers are required to inform aliens about the credible fear and asylum processes; to inform aliens of their option to obtain a consultant who can be a lawyer, friend, relative, or anyone of the aliens' choosing; and to provide a list of people and organizations that provide legal services. According to an INS official, at some locations, this information is provided during an orientation. The regulations require INS to provide interpreters in the credible fear interviews, when necessary.<sup>1</sup>

In a credible fear interview, the 1996 Act requires the asylum officer to decide whether there is a significant possibility that the alien could establish eligibility for asylum. To make this determination, INS requires

<sup>1</sup>Regarding the competency of the interpreters, INS permits the alien or the alien's consultant to request a different interpreter if he or she feels that the interpreter is not competent or neutral or requests another interpreter for whatever reason. In addition, the alien's consultant can request an interpreter whom he or she knows from past experience.



the asylum officer to consider whether a significant possibility exists that (1) the alien's statements are credible (i.e., that the alien's testimony is consistent, plausible and detailed); (2) the alien faced persecution in the past or could be harmed in the future; and (3) the alien's fear is related to one of five bases for obtaining asylum—persecution because of race, religion, nationality, political opinion, or membership in a particular social group. In addition, the asylum officer is to read mandatory information about the process, the right to appeal a negative credible fear determination to an immigration judge, and the fear of being tortured.<sup>2</sup> The asylum officer is to read aloud the mandatory paragraphs from an INS form on which the officer also records the results of the credible fear interview. See appendix VI for a reprint of the Credible Fear Worksheet.

For aliens referred to an asylum officer, INS states that the asylum officer is to consider the credible fear standard as a low threshold to screen for persons with promising asylum claims. During the interview with an asylum officer, an alien can have a consultant present. The asylum officer is to record the results of the credible fear interview, including his or her determination of the alien's ability to meet any of the five grounds for asylum. INS requires supervisory review of asylum officers' credible fear determinations<sup>3</sup>.

If the asylum officer finds that the alien has a credible fear of persecution, the alien will be placed in removal proceedings<sup>4</sup> before 1 of about 200 immigration judges during which the alien can make a formal application for asylum. During these proceedings, the immigration judge is to decide whether the alien's asylum claim warrants his or her being granted asylum in the United States. If the asylum officer finds that the alien does not have a credible fear, the alien has a right to request that an immigration judge review the negative credible fear determination. If the alien does not request a review of the credible fear determination, the alien is subject to expedited removal.

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<sup>2</sup>INS officials said that in cases where credible fear was not found, reading the required torture information was critical because applicants who are not found to have credible fear may still merit protection under the Torture Convention. At present, asylum officers are conducting Torture Convention interviews for aliens who are under a final order of removal and have no appeals or motions to reopen pending. The INS Office of the General Counsel reviews the asylum officer's interview notes and assessment and makes the final decision on which aliens merit protection under the Torture Convention.

<sup>3</sup>INS requires that when either an asylum officer or his or her supervisor determines that an alien has a credible fear, the alien is to be referred for a removal hearing before an immigration judge.

<sup>4</sup>The 1996 Act merged deportation and exclusion proceedings into a single removal proceeding.

In cases where the alien requests a review of an asylum officer's negative credible fear determination, the immigration judge is to review this determination. During this review, the immigration judge may receive into evidence any relevant written or oral statements. If the immigration judge agrees with the asylum officer's negative credible fear decision, the alien cannot appeal the immigration judge's decision and is to be removed through the expedited removal process. If the immigration judge disagrees with the asylum officer's negative credible fear decision, the alien is to be placed in removal proceedings, during which he or she can apply for asylum. During the immigration judge's review, at the discretion of the immigration judge, the alien may enlist the aid of a consultant in the review process.

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## **Data on Aliens Referred for Credible Fear Interviews**

INS data for aliens who attempted to enter the United States between April 1, 1997, and October 31, 1997, show that inspectors referred 1,396 aliens to asylum officers for a credible fear interview. Of the aliens who were referred, 1,108<sup>5</sup> had completed their interviews as of November 13, 1997. Nationwide, asylum officers determined that 79 percent of these 1,108 aliens had a credible fear of persecution. According to an INS official, about 10 percent of the aliens referred for a credible fear interview have recanted their claim of a fear of persecution before an asylum officer. As shown in table 3.1, positive credible fear determination rates for the eight asylum offices ranged from 59 to 93 percent.<sup>6</sup>

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<sup>5</sup>The remaining 288 aliens included aliens who recanted their claim of a fear of persecution and were to be removed or who had not yet been interviewed.

<sup>6</sup>See appendix VIII for more detailed information on aliens who had a credible fear interview.

**Table 3.1: Percentage of Credible Fear Determinations by Asylum Offices for Aliens Who Attempted to Enter the United States Between April 1, 1997, and October 31, 1997**

Asylum office	Percentage of determinations	
	Positive credible fear	Negative credible fear
Arlington, VA	86	14
Chicago, IL	93	7
Houston, TX <sup>a</sup>	59	42
Los Angeles, CA	82	18
Miami, FL	59	41
New York, NY	89	11
Newark, NJ	72	28
San Francisco, CA	89	11

<sup>a</sup>Total does not add to 100 percent due to rounding.

Source: INS Asylum Pre-Screening Officer Database.

## Results of Case File Reviews and Observations

We reviewed the files for all 84 negative credible fear determinations made for aliens who requested entry between May 1, 1997, and July 31, 1997. Not all of the 84 case files contained complete documentation and, therefore, some of our analysis was made on fewer than 84 cases. In most of these determinations (55 of 81) the asylum officer concluded that the aliens' fears were not based on 1 of the 5 grounds for asylum. In 25 of 76 cases, the officer concluded that the aliens' testimonies were not credible.

Documentation in the 84 case files we reviewed nationwide indicated that INS generally followed its procedures for determining an alien's credible fear, but did not consistently document whether asylum officers provided information regarding the alien's fear of being tortured. Our review of the 84 negative credible fear case files showed that the asylum officers indicated by marking on the records of interview that they (1) read the required paragraph regarding the aliens' fear of persecution in all but 1 case and (2) informed the aliens of their right to have an immigration judge review a negative credible fear determination in all but 3 cases. However, our review of the case files showed no documentation on whether the asylum officers read the paragraph on torture in 19 of 83 cases. In addition to the 84 cases, we attended 9 credible fear interviews in which the asylum officers generally followed INS' procedures regarding credible fear interviews, including reading the mandatory material. In eight out of nine cases we observed, all of the mandatory paragraphs were read

or summarized. In the ninth case, the asylum officer did not read the required paragraph on torture.

An INS official told us that the headquarters Asylum Office reviewed the cases for which the paragraph on torture was not checked off in the file and found other evidence in the file to indicate that questions related to torture were asked and, therefore, she believed that the problem was related to poor recordkeeping. The INS official also told us that INS has subsequently reiterated to its asylum officers that they are to read the paragraph on torture and ask the related questions in the credible fear interview and to record that the paragraph was read and questions were asked.

The asylum officers are to record the results of the credible fear interview, including the alien's ability to meet any of the five bases for asylum. As part of our observation, we compared asylum officers' records of the credible fear interviews to our observations. We found the credible fear worksheets completed by the asylum officers to be consistent with our observations in all of the nine cases.

Our case file review showed evidence that 69 of 75 cases had supervisory reviews. For the remaining six cases, the files did not have the signatures of supervisors indicating that they had reviewed the files.

Furthermore, in the negative credible fear determination case files we reviewed, we also determined whether in credible fear interviews an interpreter was used and if the alien had a consultant. The case files indicated that, in 66 of 82 credible fear interviews, an interpreter was used.<sup>7</sup> Aliens had consultants in 19 of the 84 cases.

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## **Asylum Adjudication Time and Interpreter Costs**

We requested that the three asylum offices we visited provide the estimated time required to process a credible fear case. The estimate for the asylum officer was to include the time needed to provide aliens with an orientation, prepare for and conduct the credible fear interview, and complete the associated paperwork. The estimate for the supervisor was to include the time spent discussing and reviewing the case and its related paperwork.

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<sup>7</sup>The following languages were most frequently translated: Haitian Creole (16 times), Spanish (16 times), Mandarin Chinese (10 times), and Albanian (5 times).

The New York and Miami asylum offices provided average time estimates on a per case basis to complete these and other tasks associated with the credible fear process. We totaled these time estimates to get an overall average of the amount of time spent per case by the asylum officers and supervisors at each office. The Los Angeles asylum office estimated average time spent by asylum officers and supervisors on the basis of total hours spent for the time period October 1 to December 19, 1997, including travel time, and did not identify the time by specific tasks. To estimate the average time per case, the Los Angeles Office divided the total hours for the asylum officers and supervisors by the number of cases for that period. Therefore, estimates from the Los Angeles asylum office and the other two asylum offices are not comparable because of the different approaches used to develop their time estimates. The data we received are summarized in table 3.2.

**Table 3.2: Estimated Average Adjudication Time and Interpreter Costs for Selected Asylum Offices to Process a Credible Fear Case**

Location	Average time and cost per case		
	Asylum officer time	Supervisor	Interpreter cost
New York, with an interpreter <sup>a</sup>	7 hours, 30 minutes	1 hour, 5 minutes	\$160
New York, without an interpreter <sup>a</sup>	6 hours, 45 minutes	1 hour, 5 minutes	N/A
Miami, with an interpreter <sup>b</sup>	5 hours, 50 minutes	25 minutes	335
Los Angeles	10 hours, 10 minutes	5 hours	222

<sup>a</sup>According to an INS headquarters official, the New York asylum office's travel only involved local travel.

<sup>b</sup>The Miami asylum office said its officers also make one to two trips per month to locations outside the Miami area. The case time remains the same but there is the added time for travel, which averaged 16 hours.

Source: INS field offices.

## Negative Credible Fear Determination Review by the Immigration Judge

Aliens who have received a negative credible fear determination from asylum officers have the option of requesting a review of their case by an immigration judge. Between April 1, 1997, and October 31, 1997, EOIR received 198 cases for review of a negative credible fear determination. Of these 198 cases, immigration judges affirmed asylum officers' negative credible fear determinations in about 83 percent of the cases.<sup>8</sup>

<sup>8</sup>Five cases were pending and not included in this calculation.

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We reviewed the bases for immigration judges' decisions made through August 31, 1997, in which they overturned (vacated) the asylum officers' determinations. In 14 of the 18 cases we reviewed, the immigration judges found that the aliens had established a "significant possibility" of harm as required by the 1996 Act.

The following six nationalities had the most numbers of aliens who requested review of their negative credible fear determinations: Haiti (51), China (24), Albania (15), Guatemala (14), Mexico (12), and El Salvador (8). The remaining 74 aliens were of 33 nationalities.

The seven judges we interviewed differed on their court procedures for consultants' roles. The consultants' roles ranged from being permitted to speak to not being allowed to speak in the court at all. The position of the Office of the Chief Immigration Judge is that although an alien has no statutory right to consult with anyone during the immigration judge's review of a negative credible fear finding, nonetheless, there are circumstances where the judge may find it extremely helpful to enlist the aid of the consultant during the review process. To ensure that his or her decision is based on all relevant material available, the immigration judge may permit the consultant to speak with the alien, may question the consultant, or may request a statement from the consultant.

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## **EOIR Adjudication Time**

According to EOIR data, the average time to complete a negative credible fear review was about 1.5 hours. This time included about 1 hour spent by the immigration judge to prepare and conduct the interview and complete the paperwork. In addition, legal technicians spent about 30 minutes on the administrative process. Furthermore, the cost for interpreters was \$71 per hour for Spanish and Creole and \$95 per hour for other languages. According to EOIR, interpreters were used in about 85 percent of all of the cases. EOIR based its estimates on data it obtained from the Krome (Miami, FL), Elizabeth (NJ), and Wackenhut (New York, NY) immigration courts for the period April 1, 1997, to September 30, 1997.

# INS' Mechanisms to Monitor the Expedited Removal Process

In addition to the procedures discussed in chapters 2 and 3, INS has developed or is in the process of developing mechanisms to monitor the expedited removal process, including the credible fear determinations. These mechanisms include establishing headquarters working groups and field experts, auditing and reviewing the process, training staff who are involved in the process, establishing procedures to be followed in carrying out the process, and getting input from nongovernmental organizations.

## INS Monitoring Activities

INS has instituted activities to monitor and provide information on and identify potential changes to the expedited removal process.

- INS established the Expedited Removal Working Group to identify and address policy questions, procedural and logistical problems, and quality assurance concerns related to the expedited removal process. The group consists of representatives from the Offices of Inspections, International Affairs, Asylum, Detention and Deportation, Field Operations, and General Counsel. One way in which the group carries out its duties is through visits to INS field units where group members review case files and meet with management and staff involved in the expedited removal process to discuss such things as resource materials, the process, and policy issues. Among other things, the Working Group has provided additional written guidance on the taking of sworn statements and on when to permit aliens to withdraw their applications.
- INS established an Asylum Office quality assurance team at headquarters to review selected credible fear files. According to INS officials, the quality assurance team is to focus on credible fear determination issues, while the Expedited Removal Working Group is to focus on the entire expedited removal process, including asylum and inspection. This quality assurance team consists of four asylum officers who are to analyze decisions in individual cases, provide feedback to applicable asylum officers, and identify trends or patterns on the basis of the reviews. Initially, the feedback to asylum officers was informal and each member of the group used his or her own review method. Beginning January 2, 1998, the team is to use a checklist to standardize the monitoring and to review all negative credible fear determinations before the decision is served on the alien. The team is to prepare monthly reports that are to address problems faced by all offices and is to address serious problems immediately.
- INS' Office of Internal Audit examines field unit functions and operations. The objectives of these reviews include evaluating units' effectiveness and determining compliance with applicable laws, regulations, and procedures. Beginning in April 1997, the audits were to include reviewing

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the expedited removal process. In chapter 2, we discussed OIA's first report that included the expedited removal process.

- As part of its efforts to communicate with outside entities that deal with immigration issues, INS has met periodically with nongovernmental organizations to discuss issues related to the expedited removal process, including the credible fear process. Some of the concerns of the nongovernmental organizations are discussed in the next section of this chapter.

In addition to these previously mentioned mechanisms, INS established certain procedures to help ensure that the expedited removal process is implemented properly and consistently. First, INS stated it trained about 16,400 of its staff on the implementation process for the 1996 Act, including the expedited removal (and credible fear) provision. According to INS officials, asylum officers were to be given additional training on making credible fear determinations. Second, INS issued operating procedures that require inspectors and asylum officers to follow specific steps when considering issuing expedited removal orders and making credible fear determinations. Third, INS requires that all expedited removal orders and credible fear determinations be reviewed by a supervisor. Finally, for aliens who were determined not to have a credible fear of persecution, INS may, at its discretion, offer a second credible fear interview to an alien, even if the alien has not established a credible fear before an asylum officer or after an immigration judge review.

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## **Concerns Raised by Nongovernmental Organizations**

Several nongovernmental organizations provided information about their concerns regarding the expedited removal process and including information on (1) issues related to the expedited removal process and credible fear determinations and (2) specific problems that aliens said they encountered when they arrived at ports of entry. In addition, these organizations provided data describing specific situations of INS' handling of aliens who were subject to expedited removal. We did not verify the data they provided. These organizations' concerns about the process included allegations that

- aliens did not understand the expedited removal process because, for example, the removal order was legalistic and incomprehensible;
- interpreters' competency varied, which in some instances caused serious mistakes to be made in translation;
- consultants were denied access to documents in applicants' case files, such as the sworn statements; and



- attorneys were not allowed to play a meaningful role at the credible fear interview (e.g., they were not permitted to make opening or closing statements or to ask questions, and they had no opportunity to consult with their clients before deciding whether to request a negative credible fear review by an immigration judge).

The organizations also raised allegations of INS officers' unprofessional treatment of aliens attempting to enter the United States. The alleged actions of INS officers included (1) not explaining the expedited removal process, including applying for asylum; (2) not providing interpretation services; (3) verbally abusing the aliens; and (4) not providing physical amenities, such as food, water, bed and blankets, and bathroom facilities.

In addition to the INS mechanisms discussed above that are related to these types of issues, INS officials told us that every alien and consultant has access to the relevant documents regarding the alien's case (e.g., sworn statement). Regarding the consultant's role, INS stated that the consultant and the asylum officer should share a cooperative role in developing and clarifying the merits of the alien's claim. Furthermore, the consultant should generally be given the opportunity to make a statement at the end of the interview, comment on the evidence presented, and ask the alien additional questions. Concerning the competency of interpreters, INS procedures provide that the alien or the alien's consultant has the right to request a different interpreter if he or she feels that the interpreter is not competent or neutral. Additionally, INS officials said that the alien or the alien's consultant may request another interpreter for whatever reason. Regarding unprofessional behavior, INS stated that it will do more to ensure that aliens, including those who attempt to enter illegally, know their civil rights and how to register a complaint if abused by an INS officer. Furthermore, the Commissioner said that INS insists on proper, humane, and polite treatment of people who are entering the United States whether their documents are correct or not.

We had no way to determine the validity of the issues that the organizations raised, including the specifics about any individual alien. Our limited observations, case file reviews, and discussions with INS officials did not identify problems similar to those raised by the organizations. Concerning our observations, our presence may have affected what took place during inspections, interviews, and reviews, but we have no way of knowing whether, how, or to what extent this happened.

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## **Changes to the Expedited Removal Procedures**

INS is in the process of changing aspects of the expedited removal procedures on the basis of input it has received from its internal groups and the nongovernmental organizations. These changes include the following:

- INS is revising some expedited removal forms that contain explanations to be read to the alien (e.g., Information about Credible Fear Interview). According to INS, as part of this revision process, it has asked some of the nongovernmental organizations to review the forms to make them easier for aliens to understand.
- INS assigned the responsibility of being an expedited removal expert to selected staff for each region and district to ensure that policy guidance is distributed, understood, and implemented. INS officials have completed training these staff on their new duties associated with being an expedited removal expert.
- INS said that it permits aliens to provide their own interpreters for credible fear interviews.



# Pending Litigation Challenging the Expedited Removal Process

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INS identified for us four pending lawsuits involving the expedited removal process. These cases are discussed below.

American Immigration Lawyers Association, et al., v. Reno, No. 97-0597 (D.D.C.) (39-16-1370) and Liberians United for Peace and Democracy, et al., v. Reno, et al., No. 97-1237 (D.D.C.) (39-16-1381) (Judge Emmet G. Sullivan).

These consolidated lawsuits, initially brought by various legal services organizations on March 28, 1997, challenge on behalf of purported refugees the “expedited removal” procedures under section 235(b)(1) of the Immigration and Nationality Act (INA), as amended by the 1996 Act. The 1996 Act establishes a 60-day period for obtaining limited judicial review of this expedited removal process. Plaintiffs seek such review, asserting various statutory, constitutional, and international law claims concerning the substantive and procedural rights of asylum seekers and potential asylum seekers. Defendants have filed pending motions to dismiss these lawsuits under the Federal Rules of Civil Procedure (FRCP) 12(b)(1) and (b)(6). The Rule 12(b)(1) “jurisdictional” issues and the Rule 12(b)(6) “merits” issues have been briefed and argued. Also briefed and argued is the government’s motion to dismiss the claims of individual alien plaintiffs who recently were added to the lawsuits. At the outset of the litigation, the court denied plaintiffs’ motion for a temporary restraining order against certain aspects of the system. The court also has denied, pending the outcome of the government’s motions to dismiss, two requests by plaintiffs for compulsory discovery.

Wood, et al., v. Reno, et al., No. 97-1229 (D.D.C.) (39-16-1385) (Judge Emmet G. Sullivan).

This lawsuit, filed on May 30, 1997, by various legal services organizations and individual aliens, also challenges the expedited removal process under INA section 235(b)(1). Plaintiffs contend on statutory, constitutional, and international law grounds that (1) the process, as administered by defendants, creates an unreasonably high risk of erroneous removal of United States citizens, lawful permanent residents, and other holders of “valid visas”; (2) plaintiff organizations have a First Amendment right to have access to aliens during expedited removal proceedings; and (3) expedited removal procedures may not validly be applied to unaccompanied minors. Defendants recently submitted a motion to dismiss under FRCP 12(b)(1) and (b)(6), which was argued on January 12, 1998. Pending the motion’s outcome, the court has deferred all discovery.

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Meng Li v. Robert C. Eddy, District Director, INS, No. A97-231 CV (D. Alaska, filed June 12, 1997).

The alien is a native and citizen of China who attempted to enter the United States as a nonimmigrant visitor at the Anchorage, Alaska, port of entry on June 6, 1997. INS officials determined that the alien was inadmissible under INA section 212(a)(6)(C) for having sought to enter by fraud or by willfully misrepresenting a material fact and, accordingly, issued an expedited removal order against her. On June 12, 1997, the alien filed a “Complaint for Declaratory and Injunctive Relief and Petition for Writ of Habeas Corpus,” claiming that she had not committed fraud and arguing on both statutory and constitutional grounds that the court should look behind her expedited removal order to determine whether INS officials had acted in good faith and without pretext. On July 2, 1997, the district court issued an order dismissing the complaint and denying the habeas corpus petition. The district court held that the scope of review under INA section 242(e)(2) did not permit adjudication of the alien’s statutory claim, and that she could not raise a valid constitutional claim because she has no constitutional rights regarding her application for admission to the United States. Shortly after this ruling, the INS removed the alien. Her attorney has filed a notice of appeal.

# Objectives, Scope, and Methodology

The 1996 Act requires us to study the implementation of the expedited removal process, including credible fear determinations, and report to the Senate and House Committees on the Judiciary. We address the following aspects of the exclusion and expedited removal processes in this report:

- how the expedited removal process and INS procedures to implement it are different from the process and procedures used to exclude aliens before the 1996 Act;
- the implementation and results of the process for making credible fear determinations during the 7 months following April 1, 1997; and
- the mechanisms that INS established to monitor expedited removals and credible fear determinations and to further improve these processes.

We also provide information on INS' and EOIR's estimates of costs to implement the expedited removal process and the time required to adjudicate expedited removal cases and credible fear determinations.

We did our work at INS and EOIR headquarters offices and INS field locations at five U.S. ports of entry—two land ports and three airports. These five locations had about 50 percent of the expedited removal cases during the 7 months after the 1996 Act was implemented. We judgmentally selected these 5 of about 260 staffed ports to include a large number of entries by aliens, geographically diverse areas, and the 2 major types of ports of entry (land ports and airports). We selected San Ysidro (CA), as a southern land port; Niagara Falls (NY), as a northern land port; and Miami International, Los Angeles International, and John Fitzgerald Kennedy International (JFK) Airports. According to INS, these ports were expected to have large volumes of expedited removal orders and the airports were anticipated to have a large number of the credible fear referrals. We discussed these selections with INS officials who said that the ports should provide us with a reasonable representation of INS' implementation of the new law. Although we visited the Niagara Falls land port, we included in some of our analyses, data for the entire Buffalo district, which includes the Niagara Falls land port.

We selected the three asylum offices at which we did our fieldwork—New York, Miami, and Los Angeles—because they conducted credible fear interviews for four (Los Angeles, JFK, Miami, and San Ysidro) of the five ports we visited. The Newark (NJ) asylum office conducted credible fear interviews for the Buffalo District Office. Because Newark was not one of the five ports we included in our review, we decided not to increase our audit costs by adding another location. We did our fieldwork related to

EOIR at four of the immigration courts—Wackenhut (New York City), Krome (Miami), San Pedro (Los Angeles), and El Centro (El Centro, CA)—which held reviews of negative credible fear determinations for aliens who attempted entry at the ports we visited. We selected these four courts because they were near the ports of entry included in our review.

To get information on the processes of exclusion and removal, which includes expedited removal and credible fear determinations, we (1) reviewed laws and INS regulations and instructions and EOIR procedures and instructions and (2) interviewed INS and EOIR officials at headquarters and in the field. We also reviewed various documentation, including the proposed and interim rules for the procedures for the expedited removal process and the INS inspectors' field manual; attended and watched video tapes of INS training sessions related to the new procedures; and attended headquarters Expedited Removal Working Group<sup>1</sup> meetings. During our interviews and data gathering efforts, we identified where comparisons could be made between exclusion and expedited removal procedures. Because of the differences in the two processes caused by the 1996 Act and data limitations, we could only make descriptive comparisons between the exclusion and expedited removal processes.

Before April 1, 1997, INS would bring all applicable exclusion charges against aliens, including aliens who attempted to enter the United States by engaging in fraud or misrepresentation or who arrived without proper documents. Therefore, our analysis of excludable aliens (i.e., aliens whom INS found inadmissible before April 1, 1997) included any alien who had been charged with attempting to enter the United States by engaging in fraud or misrepresentation or arriving without proper documents as well as any other exclusion charge. However, under the 1996 Act, aliens can be subject to expedited removal if INS only charges them with attempting to enter the United States by engaging in fraud or misrepresentation or arriving without proper documents. Accordingly, we included in our analysis those aliens before April 1, 1997, who were charged with attempting to enter the United States by engaging in fraud or misrepresentation or arriving without proper documents as well as any other charges. We included those aliens in our analysis even though after April 1, 1997, INS is to only issue an expedited removal order to aliens whom it charged with attempting to enter the United States by engaging in fraud or misrepresentation or arriving without proper documents. We did

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<sup>1</sup>INS established a team of officials from different INS organizations to oversee the implementation of the expedited removal process, including credible fear determinations. (See ch. 4.)

this to provide some perspective on the number of aliens who may have been subject to expedited removal orders before April 1, 1997.

We limited the data on the removal of aliens before April 1, 1997, to the airports because INS did not maintain nationwide data on the reasons aliens were not admitted into the United States. However, the individual airports maintained data on the reasons for aliens' inadmissibility into the country. Therefore, we analyzed the data for the Miami, Los Angeles, and JFK airports to determine the dispositions (e.g., aliens allowed to withdraw their application to enter the country or scheduled for an exclusion hearing before an immigration judge).

To obtain data on exclusion hearings before April 1, 1997, we analyzed EOIR data on the length of the hearing process, the number of asylum applicants, and the hearing outcomes for those cases EOIR received between October 1, 1995, and March 31, 1997. We included those cases for which the alien was charged at least with attempting to enter the United States by engaging in fraud or misrepresentation or arriving without proper documents; other charges could also have been included. We also identified the number of cases appealed to BIA. To obtain data on removal hearings that EOIR received from INS between April 1, 1997, and October 31, 1997, we used the same approach as we did for data before April 1, 1997, except that we included in our analysis only aliens who were only charged with attempting to enter the United States by engaging in fraud or misrepresentation or arriving without proper documents.

To present disposition data on aliens who were subject to the expedited removal process since April 1, 1997, we obtained data from INS on aliens who were processed under expedited removal but were not referred for a credible fear interview both nationwide and for the five locations in our study.

To develop data on inspectors' completion of required forms, background information about the aliens, and the length of the expedited removal process from the day the alien attempted to enter the country to the day the alien was removed, we reviewed probability samples<sup>2</sup> of 434 files for aliens who entered the expedited removal process but were not referred for a credible fear interview. This effort consisted of five separate reviews of individuals who entered the country between May 1, 1997, and July 31, 1997, at the five locations we visited, and who were processed through the

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<sup>2</sup>A probability sample is drawn using statistical, random selection methods that ensure that each member of the universe has a known probability of being selected. This approach allows us to make inferences about the entire universe.



expedited removal process. We selected the starting date of May 1, 1997, for our review to provide INS with 1 month (April 1997) to resolve any initial problems in implementation; we selected the ending date of July 31, 1997, because of the reporting date for our work. We did these file reviews at the four ports of entry and the Buffalo district. For the Buffalo District Office, which includes the Niagara Falls land port, we reviewed all of the expedited removal files for all of its ports of entry (including Niagara Falls land port) because of the small universe of cases in the district. The data we obtained from the files allowed us to make estimates about all of the expedited removal cases at these locations between May 1, 1997, and July 31, 1997, that did not go on to the credible fear determination process. We excluded minors (children under the age of 18) from our case file review because INS now generally excludes unaccompanied minors from the expedited removal process.

To obtain estimates for the costs to INS and EOIR to implement the expedited removal process, including the credible fear determinations, we asked each agency to develop cost data. Specifically, the costs we asked for were salary and benefits, travel and per diem, materials and supplies, office space and facilities, goods and services received, and any other significant costs incurred to implement the procedures. In collecting the cost data, we also obtained the basis on which the estimates were made. We did not verify the cost data but did ask INS and EOIR to provide supporting documentation, which we reviewed.

To obtain data on the time to adjudicate cases before and after expedited removal, we asked INS and EOIR officials to estimate the time required for different steps in the adjudication process for the locations included in our study. We also included payments to interpreter services. We had each major INS unit and EOIR prepare time estimates using a pro forma schedule (data collection instrument) that we prepared. For the removal estimate before April 1, 1997, we requested an average time for inspectors to process an alien for an exclusion hearing. Because INS was no longer following the exclusion process for aliens who attempted to enter the United States by engaging in fraud or misrepresentation or who arrived without proper documents, INS officials developed times estimated retrospectively. For the removal time after April 1, 1997, we asked inspections for two average times—(1) the time to process an alien to whom an inspector issued an expedited removal order and (2) the time for processing an alien whom inspectors had referred to an asylum officer for a credible fear interview. We obtained estimates from the four ports and the Buffalo District Office. We asked the asylum offices to estimate the

time related to the credible fear interview process. We asked EOIR for the time related to the negative credible fear review process. We did not ask EOIR to estimate the time of the hearing process, both before and after April 1, 1997, because this process was not part of our study. In collecting the time estimates, we also obtained the basis on which the estimates were made. We did not verify the time estimates but did ask INS and EOIR to provide supporting documentation, which we reviewed. We could not obtain the total number of aliens, or the number of aliens for the five ports we visited, who were subject to exclusion because they attempted to enter the United States by engaging in fraud or misrepresentation or arrived without proper documents because such data were not available. Therefore, we could not determine the total adjudication time before April 1, 1997.

To develop workload data related to the credible fear process that went into effect April 1, 1997, INS provided nationwide data. These data included the number of credible fear interviews held and the results of the interviews. EOIR provided data from a nationwide database on the results of the negative credible fear reviews conducted by the immigration judges. Also, we reviewed the immigration judges' worksheets for all cases in which they vacated asylum officers' negative credible fear determinations, for the period April 1, 1997, to August 31, 1997.

To determine, in part, whether it was documented that asylum officers followed certain credible fear determination processes, we reviewed all 84 files of negative credible fear determinations for the months of May through July, 1997. Most of the files were reviewed at INS headquarters in Washington, D.C. Although we are not certain that we examined files for every negative determination within our time period, we checked the files that we reviewed against other INS databases, and we are confident that we have included almost all such cases because very few discrepancies were found. As previously discussed, we excluded minors from our case file review. We focused our review on the negative credible fear determinations because of the possible harm that could arise from INS' removing aliens who had a credible fear of persecution. However, we did not assess INS' determinations. INS field units are to send these files (as well as a sample of positive credible fear determinations) to INS headquarters for review by INS headquarters asylum officers. We reviewed these files to determine if they contained documentation that INS required and to get demographic data on the aliens.

In addition, during our field visits we observed inspectors processing 16 aliens through the expedited removal process, asylum officers conducting 9 credible fear interviews, and immigration judges holding 5 negative credible fear reviews in Miami, the only location where reviews were conducted at the time of our visit. Our ability to make observations about what we saw was limited by

- the randomness of the time and location for the arrival of aliens who would have been subject to the expedited removal process at secondary inspection and
- scheduling changes, including delays and postponement of a credible fear interview with an asylum officer and negative credible fear review before an immigration judge.

In addition, planning such observations had to be done in conjunction with our field visits. Due to the limited number of interviews and reviews we were able to observe, our observation data are not generalizable to all aliens subject to the expedited removal process. Furthermore, we do not know if our presence affected what took place during our observations.

We also met and/or talked with various nongovernmental organizations (e.g., American Bar Association, Lawyers Committee for Human Rights, Lawyers' Committee for Civil Rights of the San Francisco Bay Area, Office of the United Nations High Commissioner for Refugees, Amnesty International, and American Civil Liberties Union) to discuss our methodology and to get input on the types of data we should collect through these observations and file reviews. These organizations provided information on their concerns about the expedited removal process, including credible fear determinations, and provided information about specific problems they said were encountered by aliens during the process.

To describe INS' controls to monitor and oversee the expedited removal process, including credible fear determinations, we interviewed INS officials at headquarters and locations we visited and obtained data related to these activities.

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## EOIR's and INS' Databases That We Used and Our Assessment of Their Reliability

We used INS' and EOIR's databases and, where feasible and practical, we assessed the databases' reliability.

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### EOIR Database

- The Automated Nationwide System for Immigration Review tracks cases handled by immigration judges and appeals handled by the BIA. Each EOIR field location is to enter and validate case data in its local database daily. The nationwide database also is updated with these data daily.

To develop data on pre- and post-expedited removal cases, EOIR officials provided us with extracts from the database that contained records on cases EOIR received between October 1, 1995, and October 31, 1997, for which the charges against the alien included one of the charges that would subject an alien to expedited removal. According to an EOIR official, the data in these extracts were current as of January 6, 1998.

To develop data on the immigration judges' negative credible fear reviews since April 1, 1997, EOIR officials provided us with a database extract that contained records for all open and closed negative credible fear review cases that EOIR received as of December 17, 1997. Due to the amount of time involved, we did not assess the reliability of the data in this database at the immigration courts we visited.

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### INS Databases

- Asylum Pre-Screening Officer Database is an interim database that was created by the Asylum Office. The database is to track data on the aliens subject to expedited removal who were referred for a credible fear interview until changes could be made to a mainframe INS database (the Asylum Pre-Screening System) to track the expedited removal credible fear process. Data for each case are to be keyed in at the individual asylum offices and transmitted to headquarters on a weekly basis for consolidation.

To develop data on the credible fear referrals and determinations, Asylum Office officials provided us with a copy of this database, which was current as of November 13, 1997. We spoke to staff at the three Asylum Offices that we visited about their data entry processes. Due to time and resource constraints, we did not perform reliability checks on the data.

- Deportable Alien Control System is a nationwide database that contains data related to the arrest, detention, and deportation/removal of illegal aliens. Data on aliens who are issued an expedited removal order are to be entered into this database. INS gave us a database extract, as of December 15, 1997, that contained records for all open and closed expedited removal cases categorized as:
  - alien found inadmissible under expedited removal and the alien does not express a fear of persecution or claim legal status;
  - alien found inadmissible under expedited removal, but alien claims legal status and is referred to an immigration judge for a legal status claim review; and
  - alien found inadmissible under expedited removal and ordered removed, but alien failed to surrender for removal after release from detention.

Data on aliens whom INS finds inadmissible under expedited removal and refers for a credible fear interview are also to be entered into this database. We did not capture data on credible fear referrals from this database because an INS official told us that data on these individuals are not entered into this database in a timely manner and that the Asylum Pre-Screening Officer database is a better source for data on credible fear referrals.

We did a limited review of Deportable Alien Control System data reliability at the five locations we visited. As discussed in this appendix, at these locations we did a file review of a sample of cases of aliens that INS found inadmissible under expedited removal and for which the alien did not express a fear of persecution. We had INS print out data for every ninth record in the list of files we reviewed. We compared the Deportable Alien Control System data in the printouts for some of the fields we are presenting in this report to the source documents in the files. On the basis of our review, we believe the data in these fields are generally reliable.

- Record of Intercepted Passenger System contains data on aliens whom INS finds inadmissible at airports. INS staff at JFK airport created the database in the 1980s to collect data on inadmissible air passengers that the U.S. government agreed to provide on a monthly basis to the airline industry. Each month, headquarters staff are to receive and consolidate such data from all of the airports, which are shared with the industry.

Before April 1, 1997, INS did not require ports to collect these data through this database. However, a number of the larger airports did, including

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Miami and Los Angeles. We limited our use of data in this database to the three airports we visited because of the lack of information on the reliability of the data entered by other airports using this database. We did not perform reliability checks on the data. However, we spoke to staff at these three ports about their data entry and verification processes and uses of the data. The data entry processes varied among the ports as did the amount of data entry verification. All three of the ports used the data internally to generate such things as workload numbers and intelligence data. Because of time and resource constraints (including source documents not being available at all the ports we visited) we did not perform reliability checks on the data.

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## **File Review Methodology**

The objective of our two file reviews was to obtain more detailed information about the characteristics of individuals subject to expedited removal and the credible fear interview and the processes actually followed by INS in implementing the new law. The first file review, which we conducted at the five locations we visited, was of INS files on aliens who were subject to the expedited removal process but were not referred for a credible fear interview. The second file review, which was nationwide, was of files on aliens who went through a credible fear interview and for whom INS determined they did not have a credible fear of persecution. Because of concerns about the quality of INS data, we were unable to rely exclusively on existing databases.

We developed a data collection instrument for use in extracting information from the INS files. All of the information was obtained from the case files on aliens provided to us at the port of entry, the district office, or headquarters. We relied exclusively on the information in the files, and we were unable to determine the accuracy of the information in the files. Therefore, our results cannot distinguish between a failure to ask a question in an interview and a failure to document that a question was asked.

All of the files we reviewed were for aliens who attempted to enter the United States between May 1, 1997, and July 31, 1997. For the first file review, we randomly selected case files (probability samples) at each of the five locations we visited from lists provided to us by INS of aliens who were subject to expedited removal and were not referred for a credible fear interview. For one location (Buffalo district), we selected all cases because of the small number of entries during this period. The samples selected at the other locations were large enough to allow us to make

estimates with a reasonable degree of accuracy to all individuals entering each location during those months and who were processed through expedited removal process. For the file review of aliens whom INS found not to have a credible fear of persecution, we included all the files that we could identify using a list of such aliens provided by INS. Our results cannot be projected to other locations or to other time frames.

Table II.1 provides a description of the sampling frames and dispositions for the file review of aliens who were subject to expedited removal and who were not referred for a credible fear interview at each of the locations we visited.

**Table II.1: File Review Dispositions for the Five Locations of Aliens Who Were Subject to Expedited Removal**

<b>Disposition</b>	<b>Buffalo</b>	<b>JFK</b>	<b>Los Angeles</b>	<b>Miami</b>	<b>San Ysidro</b>
Original population	81	366	162	484	4,793
Original sample	81	97	95	102	115
Files not found	6	1	14	10	12
Files found	75	96	81	92	103
Files found ineligible <sup>a</sup>	1	0	9	3	0
Final sample reviewed	74	96	72	89	103
Adjusted population <sup>b</sup>	80	366	144	468	4,793

<sup>a</sup>Cases were deleted from the sample for the following reasons: minor (less than 18 years old), stowaway, not an expedited removal case, and sent for credible fear interview.

<sup>b</sup>The adjusted population is our estimate of the number of eligible cases in the original population of interest. This estimate multiplies the original population total by the proportion of found files that were eligible. The adjusted population is calculated as follows:

$$[(\text{final sample reviewed}) / (\text{files found})] \times (\text{original population})$$

To identify the population of aliens who attempted to enter between May 1, 1997, and July 31, 1997, who were referred for a credible fear interview and INS found that they did not have a credible fear of persecution, we obtained a list from INS of such individuals. We deleted from this list aliens who were minors or stowaways or who had been paroled into the country before May 1, 1997. INS found additional files that met our review criteria, which we included in our review. The total number of files we reviewed was 84.

Because we used random sampling at four of the locations (JFK airport, Los Angeles airport, Miami airport, and San Ysidro), the results obtained for these locations are subject to some uncertainty or sampling error. The

sampling error can be expressed in terms of confidence levels and ranges. The confidence level indicates the degree of confidence that can be placed in the estimates derived from the sample. The range is a pair of values derived from the sample data, an upper and lower limit, between which the actual population values might be found. Our samples were designed so that the sampling error would not be greater than 10 percentage points at the 95-percent confidence level. Thus, if all cases in our population for a particular port of entry had been examined, the chances are 95 out of 100 that the results obtained would be included in the range formed by adding or subtracting 10 percentage points from the sample estimates. In this report, all sampling errors fall within this range, unless otherwise noted.

In addition to the reported sampling errors, the practical difficulties of conducting any file review may introduce other types of errors, commonly referred to as nonsampling errors. For example, differences in how two reviewers interpret a question, or in the ways in which two INS inspectors provided file documentation, can introduce unwanted variability into the results. We included steps in both the data collection and data analysis stages to minimize such nonsampling errors. We developed and pretested our data collection instrument in consultation with INS officials, and we conducted training with all of our staff who would be conducting the reviews. During the review process, we reviewed a small subset of our completed forms to ensure consistency in the way they were being filled out. We verified all data entry of the data collection instruments as well as all the programming used in the analyses.

We did our review from November 1996 to March 1998 in accordance with generally accepted government auditing standards.



# Historical Data on Aliens Who Attempted to Enter the United States

**Table III.1: Nationwide Historical Data on Aliens Who Attempted to Enter the United States**

Fiscal year	Total aliens inspected at the primary inspection level	Aliens referred to the secondary inspection level	Aliens not admitted into the United States				Total aliens not admitted
			Application withdrawn/refused <sup>a</sup>	Paroled <sup>b</sup>	Inspection deferred	Referred to immigration judge	
1992	315,093,572	10,102,035	911,040	64,991	23,425	16,488	1,015,944
1993	315,048,108	10,041,184	876,054	64,411	20,678	17,971	979,114
1994	325,615,962	10,480,736	953,320	60,318	23,131	15,187	1,051,956
1995	319,364,450	11,521,615	594,532	62,421	14,906	17,680	689,539
1996	315,453,144	8,646,978	596,813	96,746	17,472	23,350	734,381
1997 <sup>c</sup> (part)	156,348,463	4,164,794	283,692	49,358	8,534	16,215	357,799
<b>Total</b>	<b>1,746,923,699</b>	<b>54,957,342</b>	<b>4,215,451</b>	<b>398,245</b>	<b>108,146</b>	<b>106,891</b>	<b>4,828,733</b>

<sup>a</sup>"Refused" refers to aliens who were inadmissible and could not appeal their inadmissibility to an immigration judge because of the type of visa they presented to an inspector.

<sup>b</sup>"Paroled" refers to a procedure used to temporarily admit an excludable alien into the United States for emergency reasons or when the alien's admittance is in the public interest.

<sup>c</sup>Fiscal year 1997 time frame includes October 1, 1996, through March 31, 1997.

Source: GAO analysis of INS data.

**Appendix III**  
**Historical Data on Aliens Who Attempted to**  
**Enter the United States**

**Table III.2: Buffalo Land Ports of Entry Data on Aliens Attempting to Enter the United States**

Fiscal year	Total aliens inspected at the primary inspection level	Aliens referred to the secondary inspection level	Aliens not admitted into the United States				Total aliens not admitted
			Application withdrawn/refused <sup>a</sup>	Paroled <sup>b</sup>	Inspection deferred	Referred to immigration judge	
1992 <sup>c</sup>	26,578,885	860,723	54,986	2,195	322	1,009	58,512
1993	24,750,888	845,316	55,390	2,928	324	824	59,466
1994	22,524,153	798,574	49,635	2,155	262	974	53,026
1995	20,820,252	1,394,683	43,740	2,155	128	1,154	47,177
1996	19,920,772	1,689,952	59,709	2,423	206	1,115	63,453
1997 <sup>d</sup> (part)	8,425,797	667,015	21,708	1,380	109	479	23,676
<b>Total</b>	<b>123,020,747</b>	<b>6,256,263</b>	<b>285,168</b>	<b>13,236</b>	<b>1,351</b>	<b>5,555</b>	<b>305,310</b>

<sup>a</sup>"Refused" refers to aliens who were inadmissible and could not appeal their inadmissibility to an immigration judge because of the type of visa they presented to an inspector.

<sup>b</sup>"Paroled" refers to a procedure used to temporarily admit an excludable alien into the United States, for emergency reasons or when the alien's admittance is in the public interest.

<sup>c</sup>Fiscal year 1992 data do not include October 1992 because data were not available.

<sup>d</sup>Fiscal year 1997 time frame includes October 1, 1996, through March 31, 1997.

Source: GAO analysis of INS data.

**Appendix III**  
**Historical Data on Aliens Who Attempted to**  
**Enter the United States**

**Table III.3: JFK Airport Data on Aliens Attempting to Enter the United States**

Fiscal year	Total aliens inspected at the primary inspection level	Aliens referred to the secondary inspection level	Aliens not admitted into the United States				Total aliens not admitted
			Application withdrawn/refused <sup>a</sup>	Paroled <sup>b</sup>	Inspection deferred	Referred to immigration judge	
1992 <sup>c</sup>	4,240,817	112,729	2,858	755	5,319	6,288	15,220
1993	4,648,172	121,188	3,194	816	1,286	7,369	12,665
1994	4,814,346	123,474	3,098	777	1,408	4,525	9,808
1995	5,310,229	133,783	2,778	359	1,428	3,429	7,994
1996	5,485,048	139,325	2,877	464	2,142	2,189	7,672
1997 <sup>d</sup> (part)	2,460,233	61,247	1,232	47	854	1,059	3,192
<b>Total</b>	<b>26,958,845</b>	<b>691,746</b>	<b>16,037</b>	<b>3,218</b>	<b>12,437</b>	<b>24,859</b>	<b>56,551</b>

<sup>a</sup>"Refused" refers to aliens who were inadmissible and could not appeal their inadmissibility to an immigration judge because of the type of visa they presented to an inspector.

<sup>b</sup>"Paroled" refers to a procedure used to temporarily admit an excludable alien into the United States, for emergency reasons or when the alien's admittance is in the public interest.

<sup>c</sup>Fiscal year 1992 data do not include October 1992 because data were not available.

<sup>d</sup>Fiscal year 1997 time frame includes October 1, 1996, through March 31, 1997.

Source: GAO analysis of INS data.

**Appendix III**  
**Historical Data on Aliens Who Attempted to**  
**Enter the United States**

**Table III.4: Los Angeles Airport Data on Aliens Attempting to Enter the United States**

Fiscal year	Total aliens inspected at the primary inspection level	Aliens referred to the secondary inspection level	Aliens not admitted into the United States				Total aliens not admitted
			Application withdrawn/refused <sup>a</sup>	Paroled <sup>b</sup>	Inspection deferred	Referred to immigration judge	
1992 <sup>c</sup>	2,649,935	33,858	937	5,112	970	1,674	8,693
1993	3,053,013	46,026	1,293	15,104	1,353	928	18,678
1994	3,605,086	56,297	1,691	9,732	1,537	849	13,809
1995	3,875,347	54,205	1,877	5,938	1,245	877	9,937
1996	4,279,929	53,177	2,017	8,194	1,114	826	12,151
1997 <sup>d</sup> (part)	2,060,235	24,759	1,074	1,897	524	499	3,994
<b>Total</b>	<b>19,523,545</b>	<b>268,322</b>	<b>8,889</b>	<b>45,977</b>	<b>6,743</b>	<b>5,653</b>	<b>67,262</b>

<sup>a</sup>"Refused" refers to aliens who were inadmissible and could not appeal their inadmissibility to an immigration judge because of the type of visa they presented to an inspector.

<sup>b</sup>"Paroled" refers to a procedure used to temporarily admit an excludable alien into the United States, for emergency reasons or when the alien's admittance is in the public interest.

<sup>c</sup>Fiscal year 1992 data do not include October 1992 because data were not available.

<sup>d</sup>Fiscal year 1997 time frame includes October 1, 1996, through March 31, 1997.

Source: GAO analysis of INS data.

**Appendix III**  
**Historical Data on Aliens Who Attempted to**  
**Enter the United States**

**Table III.5: Miami Airport Data on Aliens Attempting to Enter the United States**

Fiscal year	Total aliens inspected at the primary inspection level	Aliens referred to the secondary inspection level	Aliens not admitted into the United States				Total aliens not admitted
			Application withdrawn/refused <sup>a</sup>	Paroled <sup>b</sup>	Inspection deferred	Referred to immigration judge	
1992 <sup>c</sup>	3,032,792	40,183	2,088	3,178	492	1,376	7,134
1993	3,720,690	59,169	3,310	3,243	741	3,095	10,389
1994	3,776,063	62,432	3,408	4,087	1,102	3,606	12,203
1995	4,501,090	87,922	3,655	17,961	1,149	3,436	26,201
1996	4,655,623	130,970	3,087	32,885	2,186	2,412	40,570
1997 <sup>d</sup> (part)	1,926,413	46,731	1,049	5,700	600	975	8,324
<b>Total</b>	<b>21,612,671</b>	<b>427,407</b>	<b>16,597</b>	<b>67,054</b>	<b>6,270</b>	<b>14,900</b>	<b>104,821</b>

<sup>a</sup>"Refused" refers to aliens who were inadmissible and could not appeal their inadmissibility to an immigration judge because of the type of visa they presented to an inspector.

<sup>b</sup>"Paroled" refers to a procedure used to temporarily admit an excludable alien into the United States, for emergency reasons or when the alien's admittance is in the public interest.

<sup>c</sup>Fiscal year 1992 data do not include October 1992 because data were not available.

<sup>d</sup>Fiscal year 1997 time frame includes October 1, 1996, through March 31, 1997.

Source: GAO analysis of INS data.

**Appendix III**  
**Historical Data on Aliens Who Attempted to**  
**Enter the United States**

**Table III.6: San Ysidro Port of Entry Data on Aliens Attempting to Enter the United States**

Fiscal year	Total aliens inspected at the primary inspection level	Aliens referred to the secondary inspection level	Aliens not admitted into the United States				Total aliens not admitted
			Application withdrawn/refused <sup>a</sup>	Paroled <sup>b</sup>	Inspection deferred	Referred to immigration judge	
1992 <sup>c</sup>	33,559,303	1,461,925	127,308	2,925	70	0	130,303
1993	36,758,143	1,715,130	119,143	2,356	41	21	121,561
1994	38,917,788	2,070,364	146,855	2,679	42	76	149,652
1995	36,787,815	2,226,104	166,629	2,917	20	3,526	173,092
1996	26,857,643	1,414,991	110,561	4,887	17	10,462	125,927
1997 <sup>d</sup> (part)	14,181,317	703,423	44,744	5,021	10	8,018	57,793
<b>Total</b>	<b>187,062,009</b>	<b>9,591,937</b>	<b>715,240</b>	<b>20,785</b>	<b>200</b>	<b>22,103</b>	<b>758,328</b>

<sup>a</sup>"Refused" refers to aliens who were inadmissible and could not appeal their inadmissibility to an immigration judge because of the type of visa they presented to an inspector.

<sup>b</sup>"Paroled" refers to a procedure used to temporarily admit an excludable alien into the United States, for emergency reasons or when the alien's admittance is in the public interest.

<sup>c</sup>Fiscal year 1992 data do not include October 1992 because data were not available.

<sup>d</sup>Fiscal year 1997 time frame includes October 1, 1996, through March 31, 1997.

Source: GAO analysis of INS data.

# Executive Office for Immigration Review Results From Exclusion and Removal Hearings

Between October 1, 1995, and March 31, 1997, EOIR received 42,164 exclusion cases from INS against aliens who were at least charged with attempting to enter the United States by engaging in fraud or misrepresentation or arriving without proper documents.<sup>1</sup> The final EOIR decision is made either by the immigration judge or by BIA if the alien or INS appeals the immigration judge's decision. As of January 6, 1998, 3,613 cases were pending and 38,551 cases were completed (e.g., cases that had a final EOIR decision recorded).

In 84 percent of the 38,551 completed cases, the final EOIR decision was that the alien was not to be admitted into the United States. In 16 percent of the completed cases, the final EOIR decision was that the alien should not be denied entry into the United States. However, the alien may have subsequently been denied entry into the United States. For instance, INS initially may have brought charges against the alien under the wrong type of proceeding. If INS subsequently filed charges under the correct proceeding, the final EOIR decision under that proceeding may be to deny the alien entry into the United States.<sup>2</sup>

As of January 6, 1998, aliens had appealed the immigration judges' decision to BIA in 1,397 cases, INS had appealed the decision in 180 cases, and another 15 cases were appealed by both the alien and INS or were referred by the immigration judge. Of these 1,592 cases, 1,003 were still pending, 178 aliens were to be admitted, 406 aliens were to be removed, and 5 aliens were permitted to withdraw their applications.

Approximately 8 percent of the 42,164 aliens whose cases EOIR received between October 1, 1995, and March 31, 1997, applied for asylum before the immigration judge.

As seen in table IV.1, the length of time to complete a case (for the 38,527 cases for which there was a completion date recorded) varied from 30 days or less for 26,117 (67.8 percent) of the cases, to 721 to 810 days for 44 cases (0.1 percent).<sup>3</sup> As of January 6, 1998, 3,637 cases did not have a completion date.

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<sup>1</sup>These are cases against aliens who presented themselves for admission at ports of entry.

<sup>2</sup>Additionally, in nine cases the decision was that the alien should be allowed to depart from the United States voluntarily.

<sup>3</sup>A discrepancy exists between the number of cases for which there was a final EOIR decision recorded and the number of cases for which there was a completion date recorded. The discrepancy is due to missing data within these fields in the database.

**Appendix IV**  
**Executive Office for Immigration Review**  
**Results From Exclusion and Removal**  
**Hearings**

**Table IV.1: Elapsed Days From Date  
EOIR Received the Case to Date EOIR  
Completed the Case**

<b>Elapsed days</b>	<b>Number of completed cases</b>	<b>Percentage of completed cases</b>
0-30	26,117	67.8
31-60	2,014	5.2
61-90	1,484	3.9
91-180	3,611	9.4
181-270	2,397	6.2
271-360	1,505	3.9
361-450	664	1.7
451-540	361	0.9
541-630	230	0.6
631-720	100	0.3
721-810	44	0.1
<b>Total</b>	<b>38,527</b>	<b>100</b>

Source: GAO analysis of data in EOIR's Automated Nationwide System for Immigration Review database.

For these 42,164 exclusion cases, 13,910 (33 percent) of the aliens were not detained during the hearing process, while 26,814 (64 percent) were in detention as of the most recent proceeding, and 1,440 (3 percent) were not in detention as of the most recent proceeding but had been detained at some point during the hearing process.

As seen in table IV.2, the nationality of the alien for over half the cases received by EOIR between October 31, 1995, and March 31, 1997, was Mexican.



**Appendix IV**  
**Executive Office for Immigration Review**  
**Results From Exclusion and Removal**  
**Hearings**

**Table IV.2: The 10 Most Common Nationalities of Aliens Who Were Scheduled for Exclusion Hearings**

<b>Nationality</b>	<b>Number of aliens</b>	<b>Percentage of exclusion cases</b>
Mexico	24,532	58.2
Cuba	2,905	6.9
Haiti	2,127	5.0
Nationality unknown	1,318	3.1
China	1,312	3.1
Canada	1,246	3.0
India	628	1.5
Jamaica	478	1.1
Sri Lanka	410	1.0
Pakistan	399	0.9
Other <sup>a</sup>	6,809	16.1
<b>Total</b>	<b>42,164</b>	<b>99.9</b>

Note: Percentages do not add to 100 due to rounding.

<sup>a</sup>"Other" includes aliens of 176 different nationalities and 6 aliens who were "stateless".

Source: GAO analysis of data in EOIR's Automated Nationwide System for Immigration Review database.

**After April 1, 1997,  
Removal Hearing Data**

Between April 1, 1997, and October 31, 1997, EOIR received 1,996 removal cases from INS against aliens whose only charges were for attempting to enter the United States by engaging in fraud or misrepresentation or arriving without proper documents.<sup>4</sup> The final EOIR decision is made either by the immigration judge or by BIA if the alien or INS appeals the immigration judge's decision. As of January 6, 1998, 942 cases were completed (e.g., cases that had a final EOIR decision recorded), and the remaining 1,054 cases were pending. Of the completed cases, EOIR decided not to admit the alien 50 percent of the time or to allow the alien to voluntarily depart in 3 percent of the cases. In 47 percent of the cases, the decision was that the alien should not be denied entry into the United States on the basis of the set of charges presented for these proceedings.

As of January 6, 1998, the alien had appealed the immigration judge's decision to BIA in 83 cases, and INS had appealed the decision in 5 cases. Of

<sup>4</sup>These would include cases for aliens who presented themselves for admission at ports of entry who were found not to be admissible but who were found to have a credible fear of persecution. It would also include cases for the Cuban nationals who are not subject to expedited removal and aliens who entered the United States without inspection and who subsequently came in contact with INS and were placed in removal proceedings as inadmissible aliens.

**Appendix IV**  
**Executive Office for Immigration Review**  
**Results From Exclusion and Removal**  
**Hearings**

these cases, 80 were still pending, and BIA found the alien was to be admitted in 4 cases and found the alien was to be removed in 4 cases.

For 1,996 cases received between April 1, 1997, and October 31, 1997, 691 aliens applied for asylum before the immigration judge.

Table IV.3 shows that as of January 6, 1998, 37 percent of the cases EOIR received between April 1, 1997, and October 31, 1997, and for which there was a completion date recorded, had been completed within 30 days. As of January 6, 1998, 1,060 cases did not have a completion date.<sup>5</sup>

**Table IV.3: Elapsed Days From Date EOIR Received the Case to Date EOIR Completed the Case**

<b>Elapsed days</b>	<b>Number of completed cases</b>	<b>Percentage of completed cases</b>
0-30	348	37
31-60	175	19
61-90	174	19
91-180	212	23
181-270	27	3
<b>Total</b>	<b>936</b>	<b>101</b>

Note: Percentages do not add to 100 due to rounding.

Source: GAO analysis of data in EOIR's Automated Nationwide System for Immigration Review database.

After April, 1, 1997, 615 (31 percent) of the 1,996 aliens were not detained during the hearing process, while 820 (41 percent) were in detention as of the most recent proceeding, and 561 (28 percent) were not in detention as of the most recent proceeding but had been detained at some point during the hearing process.

The most common nationality of aliens in these removal proceedings, as shown in table IV.4, was Cuban.

<sup>5</sup>A discrepancy exists between the number of cases for which there was a final EOIR decision recorded and the number of cases for which there was a completion date recorded. The discrepancy is due to missing data within these fields in the database.

**Appendix IV**  
**Executive Office for Immigration Review**  
**Results From Exclusion and Removal**  
**Hearings**

**Table IV.4: The 10 Most Common Nationalities of Aliens Who Were Scheduled for Removal Hearings**

<b>Nationality</b>	<b>Number of aliens</b>	<b>Percentage of removal cases</b>
Cuba	265	13
China	257	13
Sri Lanka	216	11
Mexico	198	10
Albania	69	3
Somalia	64	3
Haiti	60	3
India	51	3
Nigeria	50	3
Pakistan	48	2
Other <sup>a</sup>	718	36
<b>Total</b>	<b>1,996</b>	<b>100</b>

<sup>a</sup>"Other" includes aliens of 112 different nationalities. It also includes 14 aliens for which the nationality was unknown and 1 alien who was "stateless". Thirty of the countries of nationality had only 1 case.

Source: GAO analysis of data in EOIR's Automated Nationwide System for Immigration Review database.

# Description of the Violations That Subject Aliens to Expedited Removal

The violations under the INA that would subject aliens to an expedited removal order are the following: (1) obtained a visa, other documentation, or admission into the United States or any benefit under the INA through fraud or misrepresentation (INA §212(a)(6)(C)(i)); (2) obtained a benefit under federal or state law by falsely claiming to be a U.S. citizen (INA §212(a)(6)(C)(ii)); or (3) were not in possession of valid entry documents (INA §212(a)(7) subparagraphs (A)(i)(I), (A)(i)(II), (B)(i)(I), or (B)(i)(II)).

According to INS training material, in order for an alien to be found inadmissible under the first section of the INA, the misrepresentation must be willful, that is, the alien had knowledge that the information was false and he or she deliberately used the false information to gain a visa, entry, or other benefit. In addition, the misrepresentation must be material, that is, the alien is inadmissible on the true facts, or the misrepresentation tends to shut off a relevant line of inquiry that might have resulted in a determination of inadmissibility. Further, the misrepresentation must have been made to a government official and the purpose of the misrepresentation was to gain a benefit under the INA for the alien (such as admittance to the United States). In general, the inspector is not to apply this section when the alien makes a timely retraction of the misrepresentation, in most cases at the first opportunity.

The second section of the INA relates to false claims of U.S. citizenship. To be charged with this violation, the alien must have claimed to be a U.S. citizen to obtain a benefit under federal or state law.

The third section of the INA relates to specific sections of the law. These sections of the law state that aliens are inadmissible if their situation is any of the following at the time they apply for admittance:

- Any immigrant who is not in possession of a valid, unexpired visa; reentry permit; border crossing identification card; or other valid entry document and a valid unexpired passport, other suitable travel document, or document of identity and nationality if required. Two examples provided in INS training materials of situations which would fall under this basis of inadmissibility are: an immigrant in possession of an immigrant visa bearing an immigrant classification for which the alien is not eligible (hence, the alien has improper documents) and an immigrant in possession of an expired immigrant visa.

Under the INA, all aliens requesting entry are considered to be immigrants unless they are able to establish that they are entitled to a nonimmigrant

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**Appendix V**  
**Description of the Violations That Subject**  
**Aliens to Expedited Removal**

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status. If an alien applies for entry as a nonimmigrant, the alien has the burden of establishing that he or she is entitled to the nonimmigrant status as reflected on their visa. If the alien fails to establish that he or she is entitled to the nonimmigrant visa that the alien is presenting, the inspector may refuse to allow entry because the alien does not have a valid entry document.

- Any immigrant whose visa had been issued without compliance with provisions of the INA. This provision applies when the alien has an immigrant visa bearing an immigrant classification symbol; however, the alien is not entitled to that immigrant classification and the alien is not entitled to a preference class.
- Any nonimmigrant not in possession of a valid passport or a valid nonimmigrant visa or border crossing identification card. An alien who requests entry and has a valid nonimmigrant visa may be ordered removed if the inspector finds that the visa is an improper visa (e.g., the alien has a valid tourist visa but is intending to become a student).

# INS Forms Used During the Expedited Removal Process

Figure VI.1: Record of Sworn Statement in Proceedings under Section 235 (b)(1) of the Act

U.S. Department of Justice  
Immigration and Naturalization Service

Record of Sworn Statement in Proceedings  
under Section 235(b)(1) of the Act

Office: \_\_\_\_\_

File No: \_\_\_\_\_

Statement by: \_\_\_\_\_

In the case of: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

Gender (circle one): Male Female

At: \_\_\_\_\_

Date: \_\_\_\_\_

Before: \_\_\_\_\_

(Name and Title)

In the \_\_\_\_\_ language. Interpreter \_\_\_\_\_

Employed by \_\_\_\_\_

I am an officer of the United States Immigration and Naturalization Service. I am authorized to administer the immigration laws and to take sworn statements. I want to take your sworn statement regarding your application for admission to the United States. Before I take your statement, I also want to explain your rights, and the purpose and consequences of this interview.

You do not appear to be admissible or to have the required legal papers authorizing your admission to the United States. This may result in your being denied admission and immediately returned to your home country without a hearing. If a decision is made to refuse your admission into the United States, you may be immediately removed from this country, and if so, you may be barred from reentry for a period of 5 years or longer.

This may be your only opportunity to present information to me and the Immigration and Naturalization Service to make a decision. It is very important that you tell me the truth. If you lie or give misinformation, you may be subject to criminal or civil penalties, or barred from receiving immigration benefits or relief now or in the future.

Except as I will explain to you, you are not entitled to a hearing or review.

U.S. law provides protection to certain persons who face persecution, harm or torture upon return to their home country. If you fear or have a concern about being removed from the United States or about being sent home, you should tell me so during this interview because you may not have another chance. You will have the opportunity to speak privately and confidentially to another officer about your fear or concern. That officer will determine if you should remain in the United States and not be removed because of that fear.

Until a decision is reached in your case, you will remain in the custody of the Immigration and Naturalization Service.

Any statement you make may be used against you in this or any subsequent administrative proceeding.

Q: Do you understand what I've said to you?

A.

Q: Do you have any questions?

A.

Q: Are you willing to answer my questions at this time?

A.

Q: Do you swear or affirm that all the statements you are about to make are true and complete?

A.

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**Appendix VI  
INS Forms Used During the Expedited  
Removal Process**

U.S. Department of Justice  
Immigration and Naturalization Service

**Jurat for Record of Sworn Statement in  
Proceedings under Section 235(b)(1) of the Act**

Q: Why did you leave your home country or country of last residence?

A.

Q: Do you have any fear or concern about being returned to your home country or being removed from the United States?

A.

Q: Would you be harmed if you are returned to your home country or country of last residence?

A.

Q: Do you have any questions or is there anything else you would like to add?

A.

I have read (or have had read to me) this statement, consisting of \_\_\_\_\_ pages (including this page). I state that my answers are true and correct to the best of my knowledge and that this statement is a full, true and correct record of my interrogation on the date indicated by the above-named officer of the Immigration and Naturalization Service. I have initialed each page of this statement (and the corrections noted on page(s) \_\_\_\_\_).

Signature: \_\_\_\_\_

Sworn and subscribed to before me at \_\_\_\_\_  
on \_\_\_\_\_.

\_\_\_\_\_  
Officer, United States Immigration and Naturalization Service

Witnessed by: \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_

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**Appendix VI**  
**INS Forms Used During the Expedited**  
**Removal Process**

**Figure VI.2: Information about Credible Fear Interview**

U.S. Department of Justice  
Immigration and Naturalization Service

**Information about Credible Fear Interview**

**Purpose of this notice**

The purpose of this notice is to explain what will happen while you are in detention, what rights you have, and what may happen to you as a result of statements you make. It is important that you understand your rights and what will happen. **PLEASE READ THIS NOTICE CAREFULLY.**

You have been detained because the U.S. Immigration and Naturalization Service (INS) believes that you may not have the right to stay in the United States. You have indicated an intention to apply for asylum or a fear of persecution or return to your country. You will be interviewed by a specially-trained asylum officer to determine if you have a "credible fear of persecution." You will be detained until that interview takes place. If the INS finds that you have a credible fear of persecution, you may or may not be released.

**Right to consult with other persons**

Normally, the interview will not take place sooner than 48 hours after you arrive at the detention facility. You may use this time to rest and consult with family members, friends, or other representatives. In unusual circumstances, you may be given additional time to contact someone. If you need this additional time, you should inform an INS officer. You may request that the interview take place sooner if you are prepared to discuss your fears or claim immediately.

You may consult with a person or persons of your choosing, provided that such consultation is at no expense to the government and does not delay the process. A person of your choice can be present with you at your interview. A list of representatives who may be able to speak to you free of charge is attached to this notice. You may use the telephone while you are in detention to call a representative, friend or family member in the United States, collect or at your own expense. If you wish to call someone, you should inform an INS officer for assistance. You also may contact the United States Office of the United Nations High Commissioner for Refugees, at (202) 296-5191 from 9:00 a.m. - 5:00 p.m. (eastern standard time), Monday thru Friday.

**Description of credible fear interview**

The purpose of the credible fear interview is to determine whether you might be eligible to apply for asylum before an immigration judge. This interview is not your formal asylum hearing. It is only to help us determine whether there is a significant possibility that you may qualify as a refugee.

At your interview, you will have the opportunity to explain to the asylum officer why you think you should not be returned to your home country. If you want to apply for asylum in the United States, or think you will be harmed, persecuted or tortured if you return to your home country, you must show an asylum officer that you have a credible fear of being harmed or persecuted because of your race, religion, nationality, membership in a particular social group or political opinion, or that it is likely that you will be tortured.

If the officer determines that you have a credible fear or persecution or that you might face torture if you are returned to your home country, you may be eligible to remain in the United States.

It is very important that you tell the officer all the reasons why you have concerns about returning to your home country or are afraid to return to your home country. There are regulations protecting the confidentiality of asylum claims.

It is also very important that you tell the truth during your interview. Although the purpose of this interview is not to gather evidence against you, failure to tell the truth could be used against you in this or any future immigration proceeding.

Form M-444(Rev. 4-1-97)



**Appendix VI  
INS Forms Used During the Expedited  
Removal Process**

**Need for interpreter or special consideration**

If you do not speak English well or if you prefer to be interviewed in your own language, INS will provide an interpreter for the interview. The interpreter has been told to keep the information you discuss confidential. If the interpreter is not translating correctly or you don't feel comfortable with the interpreter, you may request another interpreter. The officer will take written notes.

If you will need to tell the asylum officer information that is very personal and very difficult to talk about, you may request a female officer and female interpreter, or a male officer and male interpreter. The INS will provide them if they are available. You will also have the opportunity to speak with the asylum officer separately from your family if you so desire.

**Consequences of failure to establish credible fear and review of determination**

If the asylum officer determines that you do not have a credible fear of persecution, you may request to have that decision reviewed by an immigration judge. The immigration judge's review will be in person or by telephone or video connection. The review will happen as soon as possible, to the maximum extent practicable within 24 hours, but in no case later than 7 days from the date of the asylum officer's decision. You may consult with a person or person of your choosing before the review by the immigration judge, provided it does not cause unreasonable delay. You will be given a copy of the asylum officer's record of determination to examine prior to the review by the immigration judge. If any of the information is incorrect, you should notify the immigration judge. The immigration judge may decide that you do have a credible fear and that you are eligible for a full asylum hearing before an immigration judge. If you are ordered removed, you may be barred from reentry to the United States for a period of 5 years or longer.

**Interpreter Certification**

I \_\_\_\_\_ (name of interpreter) certify that I am fluent in both the \_\_\_\_\_ and English languages, that I interpreted the above information from English to \_\_\_\_\_ completely and accurately, and that the recipient understood my interpretation.

\_\_\_\_\_  
Signature of interpreter

\_\_\_\_\_  
Date

**Alien Acknowledgment of Receipt**

I acknowledge that I have been given notice concerning my credible fear interview. I understand that I may consult with a person or persons of my choosing prior to the interview as long as it does not unreasonably delay the process and is at no expense to the Government.

\_\_\_\_\_  
Alien's signature

\_\_\_\_\_  
Date

Form M-444(Rev. 4-1-97)

**Appendix VI**  
**INS Forms Used During the Expedited**  
**Removal Process**

**Figure VI.3: Record of Determination/Credible Fear Work Sheet**

U. S. Department of Justice Immigration and Naturalization Service		<b>Record of Determination/Credible Fear Work Sheet</b>	
District Office Code: _____	File No: _____	Expedited? Y / N	
Asylum Office Code: _____	Alien's Name: _____		
Asylum Officer's Initials (when page is completed) _____	Nationality: _____		

**SECTION I: APSO INTERVIEW CHECKLIST**

1.01. Language used in interview: \_\_\_\_\_

1.02. \_\_\_\_\_ 1.03. \_\_\_\_\_ 1.04. \_\_\_\_\_  
Interpreter ID # Time Interview Started Time Interview Completed

1.05. ☐ Interpreter has APSO Packet.

1.06. ☐ If there is a G-28 in the applicant's file, then either the attorney is present or **APSO FORM G**, waiver of attorney presence, has been completed.

1.07. ☐ Applicant received and signed **Information about Credible Fear Interview** (Form M-444 for Expedited Removal, Form M-445 for Non-Expedited Removal).

**For Expedited Removal Cases:**

1.08. ☐ APSO read the following paragraph to the applicant at the beginning of the interview:

*The purpose of this interview is to determine whether you have a fear of persecution or harm in your home country. I am going to ask you questions about why you fear being removed from the United States or returned to your country. It is very important that you tell the truth during the interview and that you respond to all of my questions. This may be your only opportunity to give such information. There are regulations in the United States that protect the information you tell me from being disclosed to persons in your home country. The statements you make today may be used in deciding your claim and in any future immigration proceedings. Presenting a false or frivolous asylum application can result in permanent ineligibility for any immigration benefits under section 208(d)(6) of the Immigration and Naturalization Act, provided that you have notice. After the interview, the INS will decide whether you have a credible fear of persecution in your country.*

**For Non-Expedited Removal Cases:**

1.09. ☐ APSO read the following paragraph to the applicant at the beginning of the interview:

*The purpose of this interview is to determine whether you have a fear of persecution or harm in your home country, and whether you would appear at further immigration proceedings if you are released from detention. I am going to ask you questions about why you fear being removed from the United States or returned to your country. It is very important that you tell the truth during the interview and that you respond to all of my questions. There are regulations in the United States that protect the information you tell me from being disclosed to persons in your home country. The statements you make today may be used in deciding your claim and in any future immigration proceedings. After the interview, the INS will decide whether you can be released from detention while waiting for your hearing before an immigration judge.*

1.10. ☐ Interpreter **was NOT changed** during the interview, **OR**

1.11. ☐ Interpreter **was changed** during the interview:

1.12. ☐ Applicant requested a female interpreter replace a male interpreter, or vice versa

1.13. ☐ Applicant asserted interpreter was not competent

1.14. ☐ Applicant asserted interpreter was not neutral

1.15. ☐ APSO found interpreter was not competent

1.16. ☐ APSO found interpreter was not neutral

1.17. ☐ Before concluding the credible fear portion of the interview, APSO read the following paragraph related to the Torture Convention to the applicant, and asked appropriate questions:

**Appendix VI  
INS Forms Used During the Expedited  
Removal Process**

District Office Code: _____	File No: _____	Expedited? Y / N
Asylum Office Code: _____	Alien's Name: _____	
Asylum Officer's Initials (when page is completed) _____	Nationality: _____	

*So far I have been asking you questions to see if you have a significant possibility of getting asylum. Whether or not you obtain asylum, the United States will not return any alien when there are substantial grounds for believing that he or she would be in danger of being subjected to torture. In order to evaluate whether you should not be returned to your country under this provision, I will now ask you some questions related to torture.*

- 1.18. ☐ Interview was completed at scheduled time, or postponed for less than 24 hours, **OR**
- 1.19. ☐ Interview was postponed, and APSO provided applicant with Form M-444 (expedited) or Form M-445 (non-expedited) and explained re-interview procedures.
- 1.20. ☐ Applicant appears to have met the credible fear standard, **OR**
- 1.21. ☐ Applicant does not appear to have met the credible fear standard. The APSO summarized the applicant's claim orally, and asked the applicant if she or he had anything to add or change. The APSO's statement and the answer were recorded, in Q&A format, in the interview notes.

**For Expedited Removal:**

- 1.22. ☐ APSO read the following statement:

*We will now determine whether you have a credible fear of persecution. If the INS determines that you have a credible fear of persecution, your case will be referred to an immigration judge where it will receive further consideration. The INS will also consider whether you may be released from detention pending your hearing. If the INS finds that you do not have a credible fear of persecution, you may ask that an immigration judge review the decision. If you are found not to have a credible fear and you do not request review, you will be removed from the United States. Do you have any questions?*

- 1.23. ☐ APSO found applicant had established credible fear, and completed Form I-862, **OR**
- 1.24. ☐ APSO found applicant did not have a credible fear or warrant relief under the Torture Convention. APSO read Form I-869 to applicant, and obtained decision and signature, **AND**
- 1.25. ☐ APSO gave applicant a copy of the completed Form I-870 and a blank copy in the applicant's language, or if translation not available or applicant illiterate, read through Form I-870 with applicant.

**SECTION II: APSO INTERVIEW INFORMATION**

- 2.01. \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_      2.02. \_\_\_\_\_      2.03. \_\_\_\_\_  
Date of Interview      Site of Interview      Type of Interview
- 2.04. \_\_\_\_\_  
Language(s) of Fluency
- 2.05. \_\_\_\_\_      2.06. \_\_\_\_\_  
Language used in interview      Name of Asylum Officer or Trial Attorney and ID Number
- 2.07. Does the applicant have an attorney or representative? ☐ Yes ☐ No
- 2.08. If YES, indicate name, attorney identification number listed on the G-28, and telephone number and facsimile number (include address if different from G-28): \_\_\_\_\_
- 2.09. If YES: ☐ Attorney Present    ☐ Attorney Waived Presence    ☐ Applicant Waived Attorney Presence
- 2.10. Other(s) present at interview: \_\_\_\_\_

**Appendix VI  
INS Forms Used During the Expedited  
Removal Process**

District Office Code: _____	File No: _____	Expedited? Y / N
Asylum Office Code: _____	Alien's Name: _____	
Asylum Officer's Initials(when page is completed) _____	Nationality: _____	

**SECTION III: BIOGRAPHIC INFORMATION**

3.01. _____	Last Name [ALL CAPS]	
3.02. _____	3.03. _____	
First Name	Middle Name	
3.04. _____	3.05. _____	3.06. _____
Country of Birth	Date of Birth [M/D/Y]	Gender (M/F)
3.07. _____	3.08. _____	
Country of Citizenship	Country of Last Habitual Residence, if relevant	
3.09. _____	3.10. _____	
Port of Arrival	Date of Arrival	
3.11. _____	3.12. _____	
Place of Detention	Date of Detention	
3.13. _____	3.14. _____	
Marital Status	Number of children	
3.15. _____	Current Place of Residence of Children	
3.16. _____	3.17. _____	
Other Names Used (Aliases)	Other Date of Birth Used	

**SECTION IV: APPLICANT'S IDENTITY** How has it been determined?

- 4.01. ☐ Applicant's identity was determined with a reasonable degree of certainty:
- 4.02. ☐ Applicant's own credible statements
- 4.03. ☐ Passport which appears to be authentic
- 4.04. ☐ Other evidence presented by applicant or in applicant's file (see document list in training binder).
- List: \_\_\_\_\_
- 4.05. ☐ Other evidence applicant stated could be obtained (see document list in training binder)
- List: \_\_\_\_\_
- 4.06. ☐ Identity not determined with reasonable certainty. Explain: \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

**SECTION V: OTHER RELEASE CRITERIA**

- 5.01. Does the applicant have a relative, sponsor or other community ties? ☐ Yes ☐ No
- 5.02. If yes, please provide details such as name, address and telephone of relative or sponsor:
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

**Appendix VI  
INS Forms Used During the Expedited  
Removal Process**

District Office Code: _____ Asylum Office Code: _____ Asylum Officer's Initials (when page is completed) _____	File No: _____ Expedited? Y / N Alien's Name: _____ Nationality: _____
--	--

5.03. Does the applicant agree to all of the following three conditions? ☐ Yes ☐ No

**Check all that apply:**

- 5.04. ☐ Appear for all hearings before INS and EOIR
- 5.05. ☐ Report any change in address, support or representation
- 5.06. ☐ Appear at the local INS office or any other required location when ordered to do so

**SECTION VI: OTHER CONSIDERATIONS**

6.01. Does the applicant have a medical condition (physical or mental)? ☐ Yes ☐ No

6.02. If yes, Explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6.03. Does medical condition appear to require immediate attention? ☐ Yes ☐ No

6.04. Does medical condition appear to be serious? ☐ Yes ☐ No

6.05. Does applicant claim that medical condition relates to torture? ☐ Yes ☐ No

6.06. Should other factors be considered for a public interest parole? ☐ Yes ☐ No

6.07. ☐ Applicant may be pregnant (for non-expedited removal only)

6.08. ☐ Applicant appears to be a juvenile (for non-expedited removal only)

6.09. ☐ Applicant may have close family relatives lawfully in the United States (parent, spouse, children, or siblings who are U.S. citizens or lawful permanent resident aliens) (for non-expedited removal only)

6.10. ☐ Applicant may be a witness in judicial, administrative, or legislative proceedings in the United States.

6.11. ☐ Applicant may merit *non-refoulement* under the Torture Convention (INS use only)

6.12. ☐ Other information that the applicant would like considered

6.13. Explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SECTION VII: SUMMARY OF PERSON'S STATEMENT** Attach a typewritten page if preferred. Interview notes must be attached to the back of this page. For Expedited Removal cases, interview notes **must be typed**.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Appendix VI  
INS Forms Used During the Expedited  
Removal Process**

District Office Code: _____	File No: _____ Expedited? Y / N
Asylum Office Code: _____	Alien's Name: _____
Asylum Officer's Initials (when page is completed) _____	Nationality: _____

**SECTION VIII: CREDIBLE FEAR DETERMINATION**

A person has a credible fear of persecution if there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under section 208 of the INA.

**A. CREDIBILITY:**

8.01. ☐ **APPLICANT CREDIBLE:** Testimony detailed, internally consistent, consistent w/ country conditions and any other extrinsic evidence

8.02. ☐ **APPLICANT NOT CREDIBLE:**

8.03. ☐ Testimony internally inconsistent on material issues

8.04. ☐ Testimony not consistent with country conditions on material issues

8.05. ☐ Testimony not consistent with documentation on material issues

8.06. ☐ Testimony was vague and lacked detail on material issues

8.07. Explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**B. BASIS FOR CREDIBLE FEAR:**

8.08. ☐ Race      8.09. ☐ Religion      8.10. ☐ Nationality      8.11. ☐ Political Opinion

8.12. ☐ Check if Political Opinion is related to Coercive Family Planning

8.13. ☐ Membership in a Particular Social Group

8.14. If Social Group, Define: \_\_\_\_\_

8.15. ☐ No nexus to one of the five grounds (APSOs should refer to Section IX below for information on Torture Convention, humanitarian grounds for parole)

**C. ANALYSIS:**

Eligibility. Assume that the applicant is credible:

8.16. ☐ Applicant **HAS** a significant possibility that he or she could establish eligibility for asylum

8.17. ☐ Applicant **DOES NOT HAVE** a significant possibility that he or she could establish eligibility for asylum

8.18. Explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Bars**

8.19. Is the applicant subject to any bars to asylum?      ☐ Yes      ☐ No

8.20. ☐ Particularly Serious Crime      8.21. ☐ Security Risk      8.22. ☐ Aggravated Felon

8.23. ☐ Persecutor      8.24. ☐ Terrorist      8.25. ☐ Firmly Resettled

8.26. ☐ Serious Non-Political Crime Outside the United States (see Immigration Act 1996 definition)

8.27. Explain: \_\_\_\_\_  
\_\_\_\_\_

**Appendix VI  
INS Forms Used During the Expedited  
Removal Process**

District Office Code: _____	File No: _____ Expedited? Y / N
Asylum Office Code: _____	Alien's Name: _____
Asylum Officer's Initials (when page is completed) _____	Nationality: _____

**SECTION IX: DECISION SECTION**

**A. ASYLUM PRE-SCREENING OFFICER FINDINGS:**

9.01. Credible Fear Established? ☐ Yes ☐ No      9.02. Bar Established? ☐ Yes ☐ No

**B. OTHER CONSIDERATIONS:**

9.03. Identity Established? ☐ Yes ☐ No      9.04. Community Ties? ☐ Yes ☐ No

**For Non-Expedited Removal Cases Only:**

9.05. ☐ Applicant **DOES NOT APPEAR** Eligible for Release on Humanitarian Grounds

9.06. ☐ Applicant **DOES APPEAR** Eligible for Release on Humanitarian Grounds:

9.07. ☐ Medical Emergency      9.08. ☐ Pregnancy      9.09. ☐ Juvenile      9.10. ☐ Close Relatives Lawfully in U.S.

9.11. ☐ Witness      9.12. ☐ Torture Convention (INS use only)      9.13. ☐ Other

9.14. If Other, Explain: \_\_\_\_\_

**C. APSO/ APSO SUPERVISOR NAMES AND SIGNATURES**

9.15. \_\_\_\_\_ 9.16. \_\_\_\_\_ 9.17. \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
APSO Name APSO Signature Date

9.18. \_\_\_\_\_ 9.19. \_\_\_\_\_ 9.20. \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
SAO Name SAO Signature Date

**D. DETENTION AND DEPORTATION FINDINGS (FILE REVIEW):**

9.21. ☐ Alien has been convicted of an aggravated felony

9.22. Type and Date of Conviction[s]: \_\_\_\_\_

9.23. \_\_\_\_\_ 9.24. \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
Signature of INS Officer Date

District Office Code: _____	File No: _____	Expedited? Y / N
Asylum Office Code: _____	Alien's Name: _____	
Asylum Officer Initials (when page is completed) _____	Nationality: _____	

9.25. ☐ Release 9.26. Bond \$ \_\_\_\_\_  
9.27. ☐ No Release (If No Release, please complete Section IX, Subsection F of this form (optional if detainee is released))

**F. DETAILS OF DISTRICT DIRECTOR RELEASE DECISION:** (Optional if detainee is released)

**Applicant's community ties are:**

9.39. ☐ Law Enforcement Necessity      9.40. ☐ Torture Convention (INS use only)

9.43. ☐ Other: \_\_\_\_\_

9.54. If reason checked is different from bar(s) the APSO found, explain:

[illegible]

9.56. Explain:

Form F-870(4/1/97)



**Appendix VI**  
**INS Forms Used During the Expedited**  
**Removal Process**

District Office Code: _____	File No: _____ Expedited? Y / N
Asylum Office Code: _____	Alien's Name: _____
Asylum Officer Initials (when page is completed) _____	Nationality: _____

9.58. ☐ Other: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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# Additional Data on Aliens Who Were Charged Under the Expedited Removal Provision

Following are data on aliens who attempted to enter the United States between April 1, 1997, and October 31, 1997, and who were processed under the expedited removal provision but were not referred for a credible fear interview or a legal status claim review. The data are presented nationwide and for the five locations in our review. The data for the airports include cases for aliens entering through seaports for those locations.

**Table VII.1: Gender of Aliens Processed Under the Expedited Removal Provision Between April 1, 1997, and October 31, 1997**

Location	Male alien		Female alien		Total aliens processed
	Number	Percent	Number	Percent	
Nationwide	16,658	60	11,116	40	27,774
Buffalo district	151	77	46	23	197
JFK airport	589	65	313	35	902
Los Angeles airport	218	63	128	37	346
Miami airport	572	55	464	45	1,036
San Ysidro	7,089	60	4,744	40	11,833

Source: GAO analysis of INS data from the Deportable Alien Control System.

**Table VII.2: Age Range of Aliens Processed Under the Expedited Removal Provision Between April 1, 1997, and October 31, 1997**

Location	Age range of aliens										Total
	1 to 17		18 to 24		25 to 34		35 to 49		50 and older		
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	
Nationwide	426	2	11,981	43	10,448	38	4,143	15	761	3	27,759 <sup>a</sup>
Buffalo district	1	<sup>b</sup>	42	21	87	44	55	28	12	6	197
JFK airport	36	4	189	21	400	45	240	27	30	3	895
Los Angeles airport	23	7	100	29	128	37	80	23	14	4	345
Miami airport	29	3	208	20	397	38	343	33	59	6	1,036
San Ysidro	76	<sup>b</sup>	5,575	47	4,406	37	1,506	13	270	2	11,833

Note: Percentages do not add to 100 due to rounding.

<sup>a</sup>For 15 cases, the data on age were missing.

<sup>b</sup>Indicates less than 1 percent of the total aliens processed in the district.

Source: GAO analysis of INS data from the Deportable Alien Control System.

**Appendix VII**  
**Additional Data on Aliens Who Were**  
**Charged Under the Expedited Removal**  
**Provision**

**Table VII.3: The 10 Most Common Countries of Citizenship for Aliens Processed Under Expedited Removal Nationwide Between April 1, 1997, and October 31, 1997**

Country of citizenship	Number of aliens	Percentage of aliens
Mexico	24,311	87.5
Jamaica	354	1.3
Canada	247	0.9
Colombia	227	0.8
Guatemala	196	0.7
Dominican Republic	193	0.7
Ecuador	179	0.6
Brazil	168	0.6
China	148	0.5
Peru	137	0.5
Other <sup>a</sup>	1,614	5.8
<b>Total</b>	<b>27,774</b>	<b>99.9<sup>b</sup></b>

<sup>a</sup>"Other" is comprised of 120 countries, 31 of which had only 1 case.

<sup>b</sup>Total does not add to 100 percent due to rounding.

Source: GAO analysis of INS data from the Deportable Alien Control System.

**Table VII.4: The 11 Most Common Countries of Citizenship for Aliens Processed Under Expedited Removal at the Buffalo District Between April 1, 1997, and October 31, 1997**

Country of citizenship	Number of aliens	Percentage of aliens
Canada	76	38.6
Pakistan	11	5.6
Jamaica	9	4.6
India	7	3.6
Somalia	6	3.0
Guyana	5	2.5
Philippines	5	2.5
United Kingdom	5	2.5
Israel	4	2.0
Sudan	4	2.0
Mexico	4	2.0
Other <sup>a</sup>	61	31.0
<b>Total</b>	<b>197</b>	<b>99.9<sup>b</sup></b>

<sup>a</sup>"Other" is comprised of 42 countries, 29 of which had only 1 case.

<sup>b</sup>Total does not add to 100 percent due to rounding.

Source: GAO analysis of INS data from the Deportable Alien Control System.

**Appendix VII**  
**Additional Data on Aliens Who Were**  
**Charged Under the Expedited Removal**  
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**Table VII.5: The 10 Most Common Countries of Citizenship for Aliens Processed Under Expedited Removal at the JFK Airport Between April 1, 1997, and October 31, 1997**

Country of citizenship	Number of aliens	Percentage of aliens
Jamaica	93	10.3
Dominican Republic	92	10.2
Ecuador	79	8.8
Brazil	65	7.2
China	51	5.7
Pakistan	42	4.7
Israel	28	3.1
Peru	26	2.9
India	25	2.8
Philippines	24	2.7
Other <sup>a</sup>	377	41.8
<b>Total</b>	<b>902</b>	<b>100.2<sup>b</sup></b>

<sup>a</sup>"Other" is comprised of 70 countries, 28 of which had only 1 case.

<sup>b</sup>Total does not add to 100 percent due to rounding.

Source: GAO analysis of INS data from the Deportable Alien Control System.

**Table VII.6: The 10 Most Common Countries of Citizenship for Aliens Processed Under Expedited Removal at the Los Angeles Airport Between April 1, 1997, and October 31, 1997**

Country of citizenship	Number of aliens	Percentage of aliens
Mexico	140	40.5
China	48	13.9
Guatemala	34	9.8
El Salvador	22	6.4
Bolivia	21	6.1
Philippines	17	4.9
Peru	8	2.3
Pakistan	6	1.7
India	5	1.4
Korea	5	1.4
Other <sup>a</sup>	40	11.6
<b>Total</b>	<b>346</b>	<b>100.0</b>

<sup>a</sup>"Other" is comprised of 20 countries, 5 of which had only 1 case.

Source: GAO analysis of INS data from the Deportable Alien Control System.

**Appendix VII**  
**Additional Data on Aliens Who Were**  
**Charged Under the Expedited Removal**  
**Provision**

**Table VII.7: The 10 Most Common Countries of Citizenship for Aliens Processed Under Expedited Removal at the Miami Airport Between April 1, 1997, and October 31, 1997**

Country of citizenship	Number of aliens	Percentage of aliens
Jamaica	149	14.4
Colombia	145	14.0
Venezuela	71	6.9
Guatemala	62	6.0
Honduras	62	6.0
Costa Rica	58	5.6
Brazil	56	5.4
Peru	55	5.3
Dominican Republic	50	4.8
Ecuador	43	4.2
Other <sup>a</sup>	285	27.5
<b>Total</b>	<b>1,036</b>	<b>100.1<sup>b</sup></b>

<sup>a</sup>"Other" is comprised of 35 countries, 10 of which had only 1 case.

<sup>b</sup>Total does not add to 100 percent due to rounding.

Source: GAO analysis of INS data from the Deportable Alien Control System.

**Table VII.8: The 10 Most Common Countries of Citizenship for Aliens Processed Under Expedited Removal at the San Ysidro Between April 1, 1997, and October 31, 1997**

Country of citizenship	Number of aliens	Percentage of aliens
Mexico	11,777	99.5
Guatemala	13	0.1
El Salvador	8	0.1
Honduras	5	<sup>a</sup>
Colombia	4	<sup>a</sup>
Belize	3	<sup>a</sup>
Brazil	3	<sup>a</sup>
Peru	3	<sup>a</sup>
Costa Rica	2	<sup>a</sup>
Nicaragua	2	<sup>a</sup>
Other <sup>b</sup>	13	0.1
<b>Total</b>	<b>11,833</b>	<b>99.8<sup>c</sup></b>

<sup>a</sup>Indicates less than 1 percent of the aliens processed in the district.

<sup>b</sup>"Other" is comprised of 13 countries, all of which had only 1 case.

<sup>c</sup>Total does not add to 100 percent due to rounding.

Source: GAO analysis of INS data from the Deportable Alien Control System.

**Appendix VII**  
**Additional Data on Aliens Who Were**  
**Charged Under the Expedited Removal**  
**Provision**

Following are data from our review of a sample of files on aliens who attempted to enter the country between May 1 and July 31, 1997, and were processed through the expedited removal procedures but were not referred for a credible fear interview. For tables VII.9 through VII.13, we based the percentages on the adjusted populations of our case file review for the five locations we visited. See appendix II for a discussion of our case file review methodology. As shown in table II.1, the adjusted case file population for (1) Buffalo was 80, (2) JFK was 366, (3) Los Angeles was 144, (4) Miami was 468, and (5) San Ysidro was 4,793.

**Table VII.9: Languages Used in Secondary Interviews Between May 1, 1997, and July 31, 1997, Either by the INS Inspector or an Interpreter on the Basis of File Reviews in the Buffalo District**

Language	Percent
English	82
French	9
All others	8
<b>Total</b>	<b>99<sup>a</sup></b>

<sup>a</sup>Total does not add to 100 percent due to rounding.

Source: GAO file review.

**Table VII.10: Languages Used in Secondary Interviews Between May 1, 1997, and July 31, 1997, Either by the INS Inspector or an Interpreter on the Basis of File Reviews at the JFK Airport**

Language	Percent
English	45
Spanish	31
Portuguese	5
Russian	5
French	4
Mandarin	4
All others	5
<b>Total</b>	<b>99<sup>a</sup></b>

<sup>a</sup>Total does not add to 100 percent due to rounding.

Source: GAO file review.

**Appendix VII**  
**Additional Data on Aliens Who Were**  
**Charged Under the Expedited Removal**  
**Provision**

**Table VII.11: Languages Used in Secondary Interviews Between May 1, 1997, and July 31, 1997, Either by the INS Inspector or an Interpreter on the Basis of File Reviews at the Los Angeles Airport**

Language	Percent
Spanish	81
English	10
Chinese/Mandarin	7
Tagalog	3
<b>Total</b>	<b>101<sup>a</sup></b>

<sup>a</sup>Total does not add to 100 percent due to rounding.

Source: GAO file review.

**Table VII.12: Languages Used in Secondary Interviews Between May 1, 1997, and July 31, 1997, Either by the INS Inspector or an Interpreter on the Basis of File Reviews at the Miami Airport**

Language	Percent
Spanish	65
English	34
Creole	1
<b>Total</b>	<b>100</b>

Source: GAO file review.

In San Ysidro, Spanish was the only language used in secondary interviews between May 1 and July 31, 1997, by either the INS inspector or an interpreter on the basis of our case file reviews.

**Appendix VII  
Additional Data on Aliens Who Were  
Charged Under the Expedited Removal  
Provision**

**Table VII.13: INS Charges Against Aliens Who Were Processed Under the Expedited Removal Procedures Between May 1, 1997, and July 31, 1997**

Violation	Percentage of cases by location				
	Buffalo district	JFK airport	Miami airport	Los Angeles airport	San Ysidro
Willful misrepresentation of material fact—6(C)(i)	77	76	72	61	68
False claims to U.S. citizenship—6(C)(ii)	10	9	33	18	27
Immigrant not in possession of valid, unexpired visa, reentry permit, border crossing card and a valid passport or other travel document—7(A)(i)(I)	51	93	89	52	41 <sup>a</sup>
Immigrant with visa issued without compliance with section 203 of the INA—7(A)(i)(II)	3	3	3	0	0
Nonimmigrant not in possession of passport valid for at least 6 months beyond period of initial admission—7(B)(i)(I)	33	48	3	1	0
Nonimmigrant not in possession of valid nonimmigrant visa or border crossing card—7(B)(i)(II)	10	54	2	1	0

Note: See appendix V for a more detailed description of these charges.

<sup>a</sup>The sampling error for this estimate is 10.03 percent.

Source: GAO file review.



# Additional Data on Aliens Who Had a Credible Fear Interview

Following are data on aliens who attempted to enter the United States between April 1, 1997, and October 31, 1997, and had a credible fear interview. The data are presented nationwide and for the eight asylum offices.

**Table VIII.1: Gender of Aliens Who Had a Credible Fear Interview and Attempted to Enter the United States Between April 1, 1997, and October 31, 1997**

Location	Male		Female		Total	
	Number	Percent	Number	Percent	Number	Percent
Nationwide	762	69	346	31	1,108	100
Arlington	26	74	9	26	35	100
Chicago	63	78	18	22	81	100
Houston	73	78	21	22	94	100
Los Angeles	170	68	81	32	251	100
Miami	100	64	57	36	157	100
New York	193	75	64	25	257	100
Newark	89	66	45	34	134	100
San Francisco	48	49	51	52	99	101 <sup>a</sup>

<sup>a</sup>Percentage does not add to 100 due to rounding.

Source: GAO analysis of Asylum Pre-Screening Officer Database data.

**Table VIII.2: Age Range of Aliens Who Had a Credible Fear Interview and Attempted to Enter the United States Between April 1, 1997, and October 31, 1997**

Location	1 to 17		18 to 24		25 to 34		35 to 49		50 and older		Total	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Nationwide	93	9	311	29	426	40	225	21	22	2	1,077	101 <sup>a</sup>
Arlington	6	17	8	23	17	49	1	3	3	9	35	101 <sup>a</sup>
Chicago	10	12	23	28	30	37	17	21	1	1	81	99 <sup>a</sup>
Houston	5	6	29	33	37	43	14	16	2	2	87	100
Los Angeles	38	15	62	25	89	36	53	22	5	2	247	100
Miami	5	3	53	34	67	43	29	19	3	2	155	101 <sup>a</sup>
New York	16	6	87	35	92	37	52	21	5	2	252	101 <sup>a</sup>
Newark	2	2	28	22	61	48	33	26	3	2	127	100
San Francisco	11	12	21	23	33	36	26	29	0	0	91	100

<sup>a</sup>Percentages do not add to 100 due to rounding.

Source: GAO analysis of Asylum Pre-Screening Officer Database data.

**Appendix VIII**  
**Additional Data on Aliens Who Had a**  
**Credible Fear Interview**

**Table VIII.3: The 12 Most Common Countries of Citizenship for Aliens Who Had a Credible Fear Interview and Attempted to Enter the United States Between April 1, 1997, and October 31, 1997**

Country of citizenship	Number of aliens	Percentage of aliens
Sri Lanka	189	17
China	178	16
Albania	76	7
Haiti	76	7
Nigeria	53	5
Somalia	45	4
Mexico	41	4
Pakistan	38	3
Guatemala	35	3
Yugoslavia	29	3
India	24	2
El Salvador	23	2
Other <sup>a</sup>	301	27
<b>Total</b>	<b>1,108</b>	<b>100</b>

<sup>a</sup>"Other" is comprised of 67 countries, 24 of which had only 1 case.

Source: GAO analysis of Asylum Pre-Screening Officer Database data.

**Table VIII.4: The Six Most Common Countries of Citizenship for Aliens Who Had a Credible Fear Interview With the Arlington Asylum Office and Attempted to Enter the United States Between April 1, 1997, and October 31, 1997**

Country of citizenship	Number of aliens	Percentage of aliens
Albania	11	31
Nigeria	6	17
Somalia	3	9
China	2	6
Sierra Leone	2	6
Zaire	2	6
Other <sup>a</sup>	9	26
<b>Total</b>	<b>35</b>	<b>101</b>

Note: Percentages do not add to 100 due to rounding.

<sup>a</sup>"Other" is comprised of nine countries, all of which had only one case.

Source: GAO analysis of Asylum Pre-Screening Officer Database data.

**Appendix VIII**  
**Additional Data on Aliens Who Had a**  
**Credible Fear Interview**

**Table VIII.5: The Six Most Common Countries of Citizenship for Aliens Who Had a Credible Fear Interview With the Chicago Asylum Office and Attempted to Enter the United States Between April 1, 1997, and October 31, 1997**

Country of citizenship	Number of aliens	Percentage of aliens
Sri Lanka	15	19
Somalia	11	14
Albania	9	11
China	7	9
India	6	7
Nigeria	6	7
Other <sup>a</sup>	27	33
<b>Total</b>	<b>81</b>	<b>100</b>

<sup>a</sup>"Other" is comprised of 14 countries, 7 of which had only 1 case.

Source: GAO analysis of Asylum Pre-Screening Officer Database data.

**Table VIII.6: The Seven Most Common Countries of Citizenship for Aliens Who Had a Credible Fear Interview With the Houston Asylum Office and Attempted to Enter the United States Between April 1, 1997, and October 31, 1997**

Country of citizenship	Number of aliens	Percentage of aliens
Guatemala	15	16
Cuba	12	13
Mexico	11	12
El Salvador	6	6
Nigeria	6	6
Honduras	5	5
Sri Lanka	5	5
Other <sup>a</sup>	34	36
<b>Total</b>	<b>94</b>	<b>99</b>

Note: Percentages do not add to 100 due to rounding.

<sup>a</sup>"Other" is comprised of 20 countries, 10 of which had only 1 case.

Source: GAO analysis of Asylum Pre-Screening Officer Database data.

**Appendix VIII**  
**Additional Data on Aliens Who Had a**  
**Credible Fear Interview**

**Table VIII.7: The Six Most Common Countries of Citizenship for Aliens Who Had a Credible Fear Interview With the Los Angeles Asylum Office and Attempted to Enter the United States Between April 1, 1997, and October 31, 1997**

Country of citizenship	Number of aliens	Percentage of aliens
China	72	29
Sri Lanka	37	15
Mexico	28	11
Pakistan	16	6
El Salvador	14	6
Guatemala	11	4
Other <sup>a</sup>	73	29
<b>Total</b>	<b>251</b>	<b>100</b>

<sup>a</sup>"Other" is comprised of 34 countries, 19 of which had only 1 case.

Source: GAO analysis of Asylum Pre-Screening Officer Database data.

**Table VIII.8: The Eight Most Common Countries of Citizenship for Aliens Who Had a Credible Fear Interview With the Miami Asylum Office and Attempted to Enter the United States Between April 1, 1997, and October 31, 1997**

Country of citizenship	Number of aliens	Percentage of aliens
Haiti	70	45
Sri Lanka	29	19
Guatemala	7	5
Albania	5	3
Colombia	5	3
Lebanon	4	3
Peru	4	3
Yugoslavia	4	3
Other <sup>a</sup>	29	18
<b>Total</b>	<b>157</b>	<b>102</b>

Note: Percentages do not add to 100 due to rounding.

<sup>a</sup>"Other" is comprised of 17 countries, 9 of which had only 1 case.

Source: GAO analysis of Asylum Pre-Screening Officer Database data.

**Appendix VIII**  
**Additional Data on Aliens Who Had a**  
**Credible Fear Interview**

**Table VIII.9: The Seven Most Common Countries of Citizenship for Aliens Who Had a Credible Fear Interview With the Newark Asylum Office and Attempted to Enter the United States Between April 1, 1997, and October 31, 1997**

Country of citizenship	Number of aliens	Percentage of aliens
Albania	26	19
Sri Lanka	19	14
Nigeria	11	8
China	10	8
Somalia	9	7
Pakistan	6	5
Zaire	6	5
Other <sup>a</sup>	47	35
<b>Total</b>	<b>134</b>	<b>101</b>

Note: Percentages do not add to 100 due to rounding.

<sup>a</sup>"Other" is comprised of 28 countries, 19 of which had only 1 case.

Source: GAO analysis of Asylum Pre-Screening Officer Database data.

**Table VIII.10: The Eight Most Common Countries of Citizenship for Aliens Who Had a Credible Fear Interview With the New York Asylum Office and Attempted to Enter the United States Between April 1, 1997, and October 31, 1997**

Country of citizenship	Number of aliens	Percentage of aliens
Sri Lanka	57	22
Albania	25	10
China	20	8
Yugoslavia	19	7
Nigeria	17	7
Somalia	17	7
Ghana	12	5
Pakistan	12	5
Other <sup>a</sup>	78	30
<b>Total</b>	<b>257</b>	<b>101</b>

Note: Percentages do not add to 100 due to rounding.

<sup>a</sup>"Other" is comprised of 31 countries, 16 of which had only 1 case.

Source: GAO analysis of Asylum Pre-Screening Officer Database data.

**Appendix VIII**  
**Additional Data on Aliens Who Had a**  
**Credible Fear Interview**

**Table VIII.11: The Two Most Common Countries of Citizenship for Aliens Who Had a Credible Fear Interview With the San Francisco Asylum Office and Attempted to Enter the United States Between April 1, 1997, and October 31, 1997**

<b>Country of citizenship</b>	<b>Number of aliens</b>	<b>Percentage of aliens</b>
China	61	62
Sri Lanka	26	27
Other <sup>a</sup>	11	11
<b>Total</b>	<b>98</b>	<b>99</b>

Note: Percentages do not add to 100 due to rounding.

<sup>a</sup>"Other" is comprised of 8 countries, 5 of which had only 1 case.

Source: GAO analysis of Asylum Pre-Screening Officer Database data.

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