

**NEW YORK STATE
DEPARTMENT OF CORRECTIONS & COMMUNITY SUPERVISION**



Research In Brief

***Department Procedures For
Processing Criminal Aliens
May 2011***



RECEPTION PROCESSING

New York State Correction Law §147 requires the Commissioner of the New York State Department of Correctional Services to notify United States immigration officials of aliens received into Department custody. Therefore, in accordance with this law, the Department's reception centers schedule time slots for agents of the United States Bureau of Immigration and Customs Enforcement (ICE) to interview foreign-born inmates within three to four days of the inmates' reception into Department custody.

The interviews enable ICE to locate existing case files associated with the aliens they interview or to create a new case. ICE provides the Department with alien status information and the alien registration number of the inmates they interview. If ICE determines that an alien is amenable to deportation, ICE will lodge a detainer or warrant against that alien (or reinstate an existing deportation order).

***GENERAL CONFINEMENT
PROCESSING***

Once the reception process has been completed, inmates are sent to general confinement facilities to serve their term of imprisonment. If ICE determines through the reception center interview that a foreign-born inmate is

amenable to deportation, there are two general processes that ICE can follow to lodge a deportation order against the inmate, depending upon the inmate's alien status.

First, undocumented aliens (also known as illegal aliens) are deportable on the basis of their undocumented status. ICE is authorized by U.S.C. §1228(b) to issue an administrative deportation order without taking the case before an Immigration Judge. However, ICE may decide to file charges with the Executive Office for Immigration Review (also known as the Immigration Court) and have the case heard by an Immigration Judge if the commitment offense is classified as an aggravated felony under federal law {U.S.C §1101(a)(43)}. ICE may choose this process because the penalties for illegal re-entry into the United States are greater for deportation orders lodged for both undocumented status and commitment crime than they are for deportation orders lodged for undocumented status alone.

Second, legal permanent residents are deportable because they have been convicted of a crime. Consequently, ICE must file charges with the Immigration Court. Once charges have been filed, the Immigration Court schedules a hearing. ICE attorneys must present evidence to the Court establishing the inmate's alienage (i.e., non-citizen status) and conviction of a crime that makes them amenable to deportation. If the Immigration Judge finds the evidence presented supports the charge of deportability, the Judge will issue a deportation order which will then be lodged against the inmate.

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RELEASE PROCESS

The Department ensures that ICE is provided with ample notice of the impending release of an inmate who has an ICE detainer, ICE warrant, or deportation order lodged against them. With the exception of female inmates, the nature of the legal document lodged against the inmate determines the release facility where ICE can assume custody.

All female inmates with a legal immigration document lodged against them are released to the custody the New York City ICE District Office through the Bedford Hills Correctional Facility. Male inmates who have ICE detainers, ICE warrants, ICE warrants,

or deportation orders that are under appeal are released to the custody of the New York City ICE District Office through the Downstate Correctional Facility.

Male inmates who have final deportation orders lodged against them are released to the custody of the Buffalo ICE District Office through either the Orleans Correctional Facility or the Wende Correctional Facility. Inmates released to the custody of the Buffalo ICE District Office are held for a short time at the ICE Detention Center in Batavia, New York until they can be physically removed from the United States.

	CATEGORY OF RELEASE BY LATEST RELEASE YEAR EXCLUDING NATURALIZED CITIZENS									
	LATEST RELEASE YEAR									Total
	2002	2003	2004	2005	2006	2007	2008	2009	2010	
Release to Community	448 19%	485 21%	465 20%	342 15%	271 14%	243 14%	258 15%	235 15%	270 18%	3,017 17%
Release to ICE	1,664 72%	1,567 69%	1,601 70%	1,782 77%	1,439 76%	1,405 78%	1,305 76%	1,155 75%	1,068 72%	12,986 74%
Release to Other Warrant Authority	77 3%	90 4%	100 4%	99 4%	109 6%	74 4%	79 5%	78 5%	80 5%	786 4%
Other Release	115 5%	129 6%	135 6%	96 4%	71 4%	72 4%	81 5%	74 5%	62 4%	835 5%
Total	2,304 100%	2,271 100%	2,301 100%	2,319 100%	1,890 100%	1,794 100%	1,723 100%	1,542 100%	1,480 100%	17,624 100%