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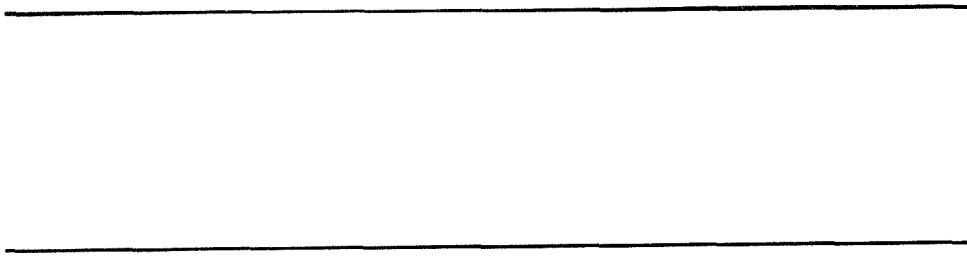
United States General Accounting Office
Transition Series

December 1992

Justice Issues



148267





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

**Comptroller General
of the United States**

December 1992

The Speaker of the House of Representatives
The Majority Leader of the Senate

In response to your request, this transition series report discusses major policy, management, and program issues facing the Congress and the new administration in the justice area. These issues include (1) strengthening leadership and management functions at the Department of Justice, (2) investigating and prosecuting white collar crime, (3) making needed policy and management decisions on immigration issues, (4) responding to a rapid rise in the federal prison population, and (5) making the government's antidrug efforts more effective.

The GAO products upon which this report is based are listed at the end of the report.

We are also sending copies of this report to the President-elect, the Republican leadership of the Congress, the appropriate congressional committees, and the Attorney General-designate.

Charles A. Bowsher

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The role of the Department of Justice in dealing with the nation's crime problems has expanded significantly in recent years. Today, the Department has more staff and is conducting more investigations than ever before. Between 1981 and 1992, the Department's budget increased from \$2.35 billion to \$10.4 billion. The Bureau of Prisons (BOP) is housing the largest number of federal inmates in its history. Between 1986 and 1992, the federal prison population grew by more than 70 percent to 80,000, as of November 1992; from now through 1996, the government will have to spend more than \$2 billion to build new prisons. Inmates convicted of drug offenses now comprise 57 percent of all federal inmates, demonstrating that the Department's antidrug efforts have met with some success. Nevertheless, significant challenges remain.

When we issued our first transition series report on justice issues 4 years ago, we said that the Department needed to strengthen its central management capabilities and to set priorities for its antidrug programs. Both of these issues still pose major challenges today. Greater progress has been made in resolving other issues that we raised in 1988—reforming sentencing, reforming

immigration, and preventing discrimination caused by immigration reform.

The decentralized operations and independence of organizations like the Federal Bureau of Investigation (FBI) and U.S. Attorneys complicate efforts by the Department of Justice to coordinate and direct a wide variety of initiatives and programs to fight crime. The central issue facing the Department of Justice is how best to provide leadership and ensure that its priorities are carried out as effectively as possible.

Since 1988, the Department has taken new steps in the area of immigration, built new federal prisons at a record pace, and dramatically increased its budget for drug control. It has also had to respond to significant new challenges, such as the wave of criminal referrals and prosecutions generated by the savings and loan and banking crises. Financial institution fraud has also become a major problem. In some areas, the volume of work is overwhelming the justice system.

In this environment, the issue of leadership is even more important today than it was in 1988. Additionally, to respond effectively to a

rising crime rate, an exploding prison population, and an intractable drug problem, the Department requires strong management processes and systems.

Strengthening the Department of Justice's Leadership and Management Functions

Leading the nation's law enforcement and administration of justice effort has always been a difficult task. A balance must be struck between the need for strong leadership in important areas and the benefits of a decentralized law enforcement mechanism in the hands of U.S. Attorneys. As world history has shown, too much central police authority can lead to grave abuses. In our country's system of justice, the creative tension that exists between centralized and decentralized management and leadership functions has led to progress on various issues. Nonetheless, given the national scope of some of the law enforcement issues that we face today, it may be necessary to reexamine the leadership role of the Attorney General and the relationship between the Department of Justice and its components and the U.S. Attorneys. Too little central direction can stymie implementation of national initiatives as well as lead to inconsistency and inefficiency.

During the 1980s, mounting public concern over crime in general and drugs in particular turned law enforcement into a growth industry at the state, local, and federal levels. However, after a decade of higher spending and promises to reduce the nation's

vulnerability to crime, the incidence of violent crime continues to grow. In view of this growth, the efficiency and effectiveness of the Department of Justice is critical.

However, the success of the Department in accomplishing its mission is complicated by its highly decentralized operations and the independence afforded its agencies and offices. The Department needs to strengthen its central management systems to ensure that they provide the Attorney General with the information necessary to effectively establish, communicate, coordinate, and oversee national goals and priorities.

There is an issue as to whether the Department is currently able to give proper perspective to the interrelationships among its components. Coordination among the various components of the criminal justice system is essential. At present, in enforcing drug laws, FBI and the Drug Enforcement Administration (DEA) independently develop investigative strategies and priorities, operate separate intelligence systems, and use different systems for reporting and measuring their effectiveness. This degree of independence requires good central oversight to ensure overall efficiency and effectiveness. Anticipated federal budget

cuts and the continued growth in violent crime—particularly in the use of firearms—further highlight the need for better interagency coordination.

It is also important to ensure that field level decisions are sufficiently in keeping with national law enforcement priorities. Justice components, located throughout the country, have the flexibility to structure their programs differently. They are able, for example, to set different operating thresholds for investigating and prosecuting offenses for which mandatory sentences have been established by law. Yet despite the existence of workload constraints and local priorities, as well as the desirability of prosecutorial discretion, strong central oversight is needed to ensure that national law enforcement programs are focused on—and consistent, efficient, and effective in pursuing—national goals and priorities.

Such oversight, however, cannot be brought to bear without good management information systems and meaningful measures of performance. In each of these areas, there is room for the Department to improve. For example, after a number of false starts and over a decade of effort, the Department still does not have in place a

case management system that can track cases being litigated and the total number of staff in the litigating organizations working on them. Similarly, while the Department has several numerical measures of its activities, these measures do not readily indicate the degree to which the Department's national goals are being achieved.

The Department also needs to resolve jurisdictional disputes. For example, within the Office of Justice Programs (OJP), conflicts exist between the five OJP bureaus and OJP management over individual bureau autonomy. To address the disputed lines of authority, the Attorney General in 1991 conferred on the Assistant Attorney General for OJP certain grant-related authorities traditionally held by the bureau directors. This solution not only created additional management problems but violated the statutes establishing the bureaus. Although OJP and the bureaus are working to resolve the management conflicts, tensions remain.

Given the national significance of law enforcement issues and the problems inherent in addressing them, it is important to assess the appropriate leadership role for the Office of the Attorney General. Central to this assessment is achieving consensus

**Strengthening the Department of
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within the Department on how to focus
federal resources effectively on key issues.

Investigating and Prosecuting White Collar Crime

The staggering costs of the financial institution debacle, Wall Street insider trading, the Department of Housing and Urban Development scandal, fraud in the growing number of bankruptcies, and fraud associated with health care all reflect the magnitude of "crime in the suites." Often, perpetrators of white collar crimes occupied positions in government, industry, and civic organizations and were highly regarded within their communities. By abusing their positions of trust, white collar criminals undermine the integrity of their professions and of government and, ultimately, are responsible for the loss of billions of dollars annually from the nation's economy.

Increasingly, white collar crime cases are overwhelming the justice system, as the following examples show.

- Criminal financial institution fraud referrals continue to increase. More than 35,000 referrals were submitted to FBI in fiscal year 1992—up from 25,000 in fiscal year 1991.
- U.S. Attorneys in several large districts generally decline to prosecute health care fraud cases under \$100,000.

- FBI reports that bankruptcy fraud is largely unaddressed and that bankruptcies are ripe for abuse: The number of filings has more than tripled over the last 10 years.
- As of September 1992, Justice had received referrals of alleged criminal activity by former directors, officers, and principal shareholders associated with 336 of the 723 savings and loans under Resolution Trust Corporation control. As of July 1992, Justice had indicted directors, officers, and principal shareholders in 72 of these savings and loans.

In response, the Department has applied significantly more resources. FBI, for example, has tripled the number of agents working on white collar crime since 1985. Congressional appropriations have allowed a tripling of U.S. attorney resources dedicated to financial institution fraud. As the available resources have grown, so have the number of indictments, arrests, and convictions. For example, the number of defendants sentenced to prison for white collar crimes increased from 4,350 to 5,300 between fiscal years 1985 and 1991.

However, the Department alone cannot adequately address white collar crime.

Effective intervention requires a more cohesive federal response, using the full range of the government's resources and expertise. Yet Justice's ability to address white collar crime is hampered both by the decentralized nature of the Department and by the structure of the government as a whole. Individual U.S. Attorneys around the country exercise great discretion in managing their programs and resources. In addition, Justice has little, if any, influence over agencies outside the Department—such as the Internal Revenue Service—that are often critical for effective investigations and prosecutions. These organizational barriers have resulted in a fragmented approach to pursuing white collar crime. For example, efforts to form financial institution fraud task forces around the country were largely unsuccessful because Justice and non-Justice agencies could not agree on the appropriate level of non-Justice resources and on which agency should pay for these resources. In addition, some U.S. Attorneys, who preferred to work independently, rejected the task force concept.

Another issue associated with white collar crime is whether the punishment is severe enough for the offense committed. For example, the median prison sentence in 1991

for fraud was 21 months. Fewer than 7 percent of the fraud convictions since 1988 involving savings and loan and bank losses of \$100,000 or more received prison sentences of 60 months or more. While fines and restitutions ordered in these cases have totaled nearly \$850 million, less than 5 percent of these funds had been collected through mid-1992. Justice says that most of the balance is not collectible. Whether or not this is the case, Justice's collection efforts lack a consistent approach and an adequate database.

We recognize that the Department does not control the specific sentences and monetary penalties imposed for crimes. However, the Department is the logical focal point for (1) determining whether the punishment being meted out provides the necessary deterrent effect and (2) seeking change if needed. Furthermore, the Department needs to make a stronger effort to ensure the collection of as large a portion as possible of the total monetary penalties imposed.

Justice, working with other departments and agencies, needs to take a number of steps to better address the growth in white collar crime. Paramount is the need to better integrate the efforts of Justice and

non-Justice agencies into a cohesive national response. Finally, Justice, working with the Administrative Office of the U.S. Courts, should improve its management of debt collection.

Making Needed Policy and Management Decisions on Immigration Issues

As long as political unrest and economic hardships persist throughout the world, refugees will continue to flee to the United States. Hence, the United States will continue to face complex and difficult immigration issues, such as

- who should be permitted to legally enter the country,
- what should be done to prevent aliens from entering illegally, and
- what should be done to remove aliens who remain here illegally.

In addition to these policy issues, management problems within Justice's Immigration and Naturalization Service (INS) need to be resolved.

From without and from within, the United States is pressured to allow refugees to enter the country legally to escape intolerable conditions in other countries. For example, as civil unrest, poor economic conditions, and natural disasters occur in other countries, refugees look to this country as a safe haven. U.S. citizens are often eager to facilitate the entry of refugees whose ethnic background is the same as their own. This

pressure can lead to different immigration policies being applied to refugees from different ethnic backgrounds. For example, Cubans are readily permitted to enter and remain in the country, whereas Haitians are interdicted at sea and returned to Haiti.

In addition to regulating the access of aliens seeking legal entry, INS is responsible for stopping millions of aliens trying to enter the country illegally. Some of these aliens smuggle contraband, such as drugs. Preventing illegal entry raises several issues, including (1) the feasibility and effectiveness of different approaches to, and technologies for, improving border control; (2) humanitarian concerns, such as equitable treatment of aliens of different nationalities and divided families; and (3) cost considerations and trade-offs, such as choosing between detaining aliens and preventing their illegal entry. Conflicting with INS' border enforcement role are trade facilitation objectives calling for the efficient flow of goods across the border.

In removing aliens from the country, INS is confronted with the almost impossible task of trying to locate and deport aliens that it believes should not remain here. For example, aliens who have committed certain

crimes are subject to deportation but are required to have a hearing before an immigration judge to establish their deportability. INS does not have sufficient resources to detain the millions of aliens who are subject to detention or who have been ordered deported. Consequently, most of the aliens whom INS apprehends are released pending the resolution of their deportation hearings. However, these aliens usually do not appear for their hearings and remain here illegally.

In addition to these difficult policy issues needing congressional and administrative attention, INS needs strong leadership and management to

- balance the demanding roles of enforcement and service and
- overcome problems in the management of its enforcement efforts and of the services that it provides to aliens.

Managing such competing enforcement and service functions means making hard decisions about allocating resources to ensure the agency's most effective operations. Over the past decade, weak management systems and inconsistent

leadership at INS led to segmented autonomous programs, each of which tried to handle its own set of problems and gave little attention to interrelationships among programs. Without coherent overall direction and basic management reforms, the organization was unable to effectively address changing enforcement responsibilities and long-standing service delivery problems. In response to these problems, INS reorganized its management and operations.

Financial management at INS was weak, and the agency did not have fiscal accountability over its resources. Its outmoded accounting system, weak internal controls, and lack of management emphasis on financial management contributed to this situation. INS could lose millions of dollars in revenue because accurate and reliable financial information is not available to effectively bill, collect, or litigate amounts owed the government. Furthermore, the agency's primary accounting system contained incomplete and inaccurate financial data. These weaknesses remained uncorrected for many years. Addressing these problems, which INS can do in implementing its Chief Financial Officers Act, will require strong

and sustained management commitment and leadership.

In the past, INS' budget development process was chaotic. The agency's budgets were simply compilations of program submissions with little accountability for funds or attention to agencywide priorities. The current INS reorganization addresses some concerns but has not fully resolved the issue of segmented management. Although INS is addressing some of these management problems, action is still needed to improve program enforcement and service. For example, even though aliens pay fees to cover processing costs, they still have to wait months to have their applications processed. While expenditures nearly doubled between fiscal years 1986 and 1989, overall processing times have not improved, and in key INS districts processing times have substantially exceeded INS' criteria.

During the last several years, the Office of the Attorney General has focused much more effectively on management issues relating to INS. New people have been recruited for key positions, and a renewed effort has been made to deal with the long-term problems that exist at INS. Achieving progress will be difficult, but we

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are encouraged by the departmental
commitment to bring about change. It is
important that this commitment be sustained
in the years to come.

Responding to a Rapid Rise in the Federal Prison Population

A growing prison population was perhaps the most visible result of the increases in federal resources—investigative, prosecutorial, and judicial—devoted to federal criminal law enforcement in the 1980s. Policy initiatives—such as an expanded “drug war,” implementation of federal sentencing guidelines, and the enactment of mandatory minimum sentences for a number of drug and firearms offenses—have led to a rapidly growing federal prison population that generally serves longer sentences. This rising population has strained prison capacity and budgetary resources. Indeed, the major issue facing the federal corrections system is finding less costly ways of achieving the corrections goals of deterrence and public safety while providing inmates with humane care and services that equip them to become law-abiding citizens upon release.

Between fiscal years 1986 and 1992, the federal prison population grew from 41,500 to 70,630; by 1996, a population of about 106,000 is projected. One reason for this expected future growth is the implementation of federal sentencing guidelines, which took effect on November 1, 1987. Reflecting the “get tough on crime” policies of the last decade, the

guidelines offer judges fewer nonprison sentencing options for most offenders. Consequently, a greater proportion of convicted offenders are going to prison for longer terms, decreasing the turnover in the federal prison population and increasing capacity requirements. In 1990, about 74 percent of offenders sentenced under the guidelines were sent to prison, as compared with 53 percent in 1986, before the guidelines took effect. The length of the average sentence in 1990 had increased by about a year—from 53 to 61 months. Moreover, because parole had been eliminated under the guidelines, an inmate could expect to serve, on average, almost 3 years longer—from about 19 to 52 months.

Drug offenders will continue to have a major impact on the federal corrections system. Inmates convicted of drug offenses now comprise 57 percent of all federal inmates, and they are expected to constitute about two-thirds (71,000) of the 1996 population. Under the guidelines, almost 9 in 10 convicted drug offenders are sentenced to prison for an average of 83 months—at least 70 months of which they can expect to serve.

The costs of housing and caring for this growing population continue to rise.

Between 1986 and 1992, corrections budgets, primarily for federal prisons, nearly quadrupled from about \$600 million to about \$2.3 billion. Despite the increased use of 2-person cells and plans to activate 44 additional facilities with a capacity of about 30,000 inmates between 1992 and 1996, BOP expects the growth in the inmate population to outstrip the increase in capacity by about 6,000 inmates. The estimated cost of constructing these new facilities is almost \$2.2 billion. BOP estimates the costs of operating these new facilities, over their useful life, at about 15 to 20 times the construction costs.

These rapidly rising costs have focused attention on the costs of traditional incarceration. Given an average annual cost of about \$18,000 per inmate for traditional imprisonment, the Sentencing Commission, BOP, and the courts need to explore means of reducing corrections costs. Where possible, less costly minimum security facilities should be used. The current limited use of prison alternatives—such as “boot camps” (also called “shock incarceration”) for first offenders, halfway houses, electronic home detention, and intensified supervision—should be evaluated and expanded where feasible. Furthermore, BOP

may need to use intermediate forms of confinement, such as halfway houses, more extensively to reintegrate long-term inmates into the community upon release. To do this, BOP must also work more closely with the federal courts' probation service to provide prerelease plans that include an inmate's medical profile, substance abuse history, and other information needed to develop an appropriate supervision plan.

Regardless of the form of confinement used, BOP faces a challenge in meeting the medical needs of its growing and aging inmate population, many of whom have special needs. About half of all entering inmates have a substance abuse or dependency problem, but fewer than half of these are receiving treatment. In 1992, BOP spent almost \$5 million treating about 1,200 HIV positive inmates, about 200 of whom had AIDS—a problem that is expected to grow as the prison population expands. In the close confines of prison life, the emergence of a drug-resistant strain of tuberculosis is also a potentially grave medical problem. The female inmate population, now about 8 percent of the total federal prison population, is growing faster than the male population and requires special medical procedures, such as breast cancer screening.

BOP is grappling with the rising costs of meeting inmates' medical care needs and hiring trained medical staff. BOP reprogrammed over \$4 million in 1991 and 1992 to provide for increased outside medical care costs and requested an additional \$4.5 million in fiscal year 1993. BOP must decide whether to increase its own medical care capacity or meet rising medical care needs through contract care. Even with the additional capacity planned between now and 1996, BOP anticipates that its ratio of medical beds to inmates will fall from the current 27 beds per 1,000 inmates to about 23.

Building even more medical facilities would add to an already costly construction program, and BOP may have difficulty staffing any new facilities. Despite an enhanced recruitment effort, at the end of fiscal year 1991, BOP had filled about 59 percent of its authorized positions for nurses and 66 percent of its positions for medical officers. Given the difficulties of recruiting qualified medical personnel, predicting the amount and type of medical care that inmates may need, and meeting the costs of increasing existing medical care capacity to accommodate those anticipated needs, BOP should consider alternative methods of

health care delivery. These alternatives might include contracting out for prison medical services and enhancing preventive care programs. In contracting out, health maintenance organizations or preferred provider models might be used.

Making Antidrug Efforts More Effective

To combat the drug problem, the Congress created a Drug Czar—Director, Office of National Drug Control Policy (ONDCP)—in the Executive Office of the President. Starting in 1989, ONDCP was to plan a drug war (establish a national drug control strategy, including long- and short-term goals), annually develop a governmentwide budget to carry out the war, and annually report to the Congress on the progress of the war and revise the underlying strategy as appropriate. Despite the creation of ONDCP, the drug problem persists.

Under ONDCP's guidance, the federal government dramatically increased drug control funding in three key program areas: (1) stopping drugs from entering the country, (2) enforcing domestic laws against drug trafficking and possession, and (3) providing drug treatment and prevention services. For fiscal years 1989 through 1992, the federal government committed \$39 billion to reduce drug use. Of the \$12 billion currently spent each year on drug programs, over 70 percent is expended on law enforcement as opposed to treatment; almost \$3 is spent on law enforcement for every \$1 spent on treatment.

While the number of illicit drug users has declined somewhat, the numbers of drug-related homicides and hospital emergency visits and deaths remain near record highs, as does drug use by arrested criminals. Policymakers will be asked to consider what more can be done to alleviate our nation's persistent long-term drug problem and halt the spread of drug-related crime and violence. Should the new administration stay the course, as ONDCP advocates, or place greater emphasis on drug prevention and treatment?

ONDCP's annual strategies have not set clear expectations for each drug control program. Without such expectations and without objective data to measure progress toward meeting those expectations, there is little basis for judging either the efficiency of the strategy in committing resources or the efficacy of the strategy's program components. For example, intelligence data indicate that overseas production of cocaine has grown consistently over the past 10 years and that domestic prices are much lower today than they were 10 years ago. Neither the strategy nor the drug budget relates these conditions to the missions of drug programs or evaluates the implications of these conditions for current strategy. In

short, accountability is lacking for the billions of dollars being spent on the nation's drug control programs.

ONDCP, through its annual drug strategy, should and must establish accountability for the billions being spent on the drug war. Developing accountability and performance measures is difficult. However, tying the financial costs of drug control programs to program results is fundamental to making informed policy decisions.

To achieve accountability over the nation's drug control efforts, ONDCP needs to develop outcome-oriented goals for each drug control program. Currently, the drug strategy does not include such goals. Furthermore, there is little information for judging whether the new administration should place more or less emphasis on drug prevention and treatment programs. Specifically, ONDCP needs to develop databases to collect baseline data on law enforcement and treatment efforts.

During 1993, the Congress will hold hearings on the reauthorization of ONDCP. As a focal point for these hearings, ONDCP, the drug control agencies—including the Department of Justice and the Department of Health and

Human Services—and the oversight committees need to focus on identifying appropriate measures of accountability. By and large, these collaborative efforts should be aimed at reaching agreement on the best available benchmarks of performance and the most reasonable expectations for programs, given the level of resources committed.

Related GAO Products

Office of Justice Programs: Discretionary Grants Reauthorization (GAO/GGD-93-23, Nov. 20, 1992).

Bank and Thrift Criminal Fraud: Information on Justice's Investigations and Prosecutions (GAO/GGD-93-10FS, Oct. 5, 1992).

Sentencing Guidelines: Central Questions Remain Unanswered (GAO/GGD-92-93, Aug. 14, 1992).

Immigration Control: Immigration Policies Affect INS Detention Efforts (GAO/GGD-92-85, June 25, 1992).

Asset Forfeiture: U.S. Marshals Service Internal Control Weaknesses Over Cash Distributions (GAO/GGD-92-59, May 8, 1992).

Drug Control: Difficulties in Denying Federal Benefits to Convicted Drug Offenders (GAO/GGD-92-56, Apr. 21, 1992).

The Drug War: Counternarcotics Programs in Columbia and Peru (GAO/T-NSIAD-91-9, Feb. 20, 1992).

Bank and Thrift Fraud: Overview of the Federal Government's Response (GAO/T-GGD-92-12, Feb. 6, 1992).

Adolescent Drug Use Prevention: Common Features of Promising Community Programs (GAO/PEMD-92-2, Jan. 16, 1992).

Prison Alternatives: Crowded Federal Prisons Can Transfer More Inmates to Halfway Houses (GAO/GGD-92-5, Nov. 14, 1991).

Prison Costs: Opportunities Exist to Lower the Cost of Building Federal Prisons (GAO/GGD-92-3, Oct. 25, 1991).

ADMS Block Grant: Drug Treatment Services Could be Improved by New Accountability Program (GAO/HRD-92-27, Oct. 17, 1991).

Drug Control: Impact of DOD's Detection and Monitoring on Cocaine Flow (GAO/NSIAD-91-297, Sept. 19, 1991).

Drug Treatment: Despite New Strategy, Few Federal Inmates Receive Treatment (GAO/HRD-91-116, Sept. 16, 1991).

Prison Expansion: Staffing New Facilities Will be a Challenge for BOP (GAO/GGD-92-75, May 12, 1991).

The War on Drugs: Arrests Burdening Local Criminal Justice Systems (GAO/GGD-92-40, Apr. 3, 1991).

Border Patrol: Southwest Border Enforcement Affected by Mission Expansion and Budget (GAO/GGD-92-72BR, Mar. 28, 1991).

Federal Prisons: Revised Design Standards Could Save Expansion Funds (GAO/GGD-91-54, Mar. 14, 1991).

Financial Management: INS Lacks Accountability and Controls Over Its Resources (GAO/AFMD-92-20, Jan. 24, 1991).

Immigration Management: Strong Leadership and Management Reforms Needed to Address Serious Problems (GAO/GGD-91-28, Jan. 23, 1991).

Information Management: Immigration and Naturalization Service Lacks Ready Access to Essential Data (GAO/IMTEC-90-75, Sept. 17, 1990).

Immigration Reform: Employer Sanctions and the Question of Discrimination (GAO/GGD-90-62, Mar. 29, 1990).

Immigration Control: Deporting and Excluding Aliens From the United States (GAO/GGD-90-18, Oct. 16, 1989).

Related GAO Products

Controlling Drug Abuse: A Status Report
(GAO/GGD-88-39, Mar. 1, 1988).

Justice Issues (GAO/OCG-89-13TR, Nov. 1988).

Justice Department: Improved Management Processes Would Enhance Justice's Operations (GAO/GGD-86-12, Mar. 14, 1986).

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