

December 1994

INS FINGERPRINTING OF ALIENS

Efforts to Ensure Authenticity of Aliens' Fingerprints



General Government Division

B-259343

December 22, 1994

The Honorable Charles T. Canady
The Honorable Randy "Duke" Cunningham
The Honorable Hamilton Fish, Jr.
The Honorable Elton Gallegly
The Honorable Porter J. Goss
The Honorable Duncan Hunter
The Honorable Henry J. Hyde
The Honorable Bill McCollum
The Honorable Jan Meyers
The Honorable Susan Molinari
The Honorable Carlos J. Moorhead
The Honorable Dana Rohrabacher
The Honorable Edward R. Royce
The Honorable Christopher Shays
The Honorable Lamar S. Smith
House of Representatives

This report responds to your joint request that we examine the Immigration and Naturalization Service's (INS) fingerprinting procedures for aliens applying for benefits such as permanent residency and naturalization. As we discussed in our July 14, 1994, letter, many of your questions were addressed in a February 1994 Department of Justice Office of Inspector General (OIG) report.¹ Accordingly, we agreed to determine what actions INS had taken in response to findings in the OIG report. Specifically, we agreed to evaluate the

- changes INS had taken or planned to ensure that the fingerprints aliens submit to INS are their own, including the options that INS considered to improve the integrity of the fingerprint process and the future impact of automated fingerprinting identification systems;
- steps INS had taken to ensure timely mailing of fingerprint cards to the Federal Bureau of Investigation (FBI) and timely filing of criminal history reports from the FBI; and
- actions INS had taken to follow up on fingerprint cards rejected by the FBI because of illegibility or incomplete information.

Results in Brief

INS officials said to improve control over the fingerprinting process, they developed plans to implement a certification program in 1995 for

¹U.S. Department of Justice Office of Inspector General, Alien Fingerprint Requirements in the Immigration and Naturalization Service (Feb. 16, 1994).

fingerprint providers. Under the proposed certification program, INS plans to only accept applications from aliens that include fingerprints taken by an INS-certified organization. As part of the certification program, INS plans to establish procedures for fingerprint providers, such as requiring aliens to provide proper photo identification. INS plans to monitor fingerprint providers at least once every 3 years to ensure that INS procedures are being followed. According to INS, as part of its long-term plans to address problems with fingerprinting, it plans to use an automated fingerprint identification system that the FBI is developing to electronically transmit information, which should reduce fingerprint process time.

INS headquarters issued directives instructing district directors to correct problems with the (1) timely mailing of fingerprint cards to the FBI, (2) timely filing of the FBI's criminal history reports, and (3) resubmission of rejected fingerprint cards. However, the officials said that INS had not monitored the districts' progress in correcting these problems. Our discussions with officials in three district offices showed that these problems continued to exist in varying degrees.

According to the OIG report, as well as the discussions we had with INS officials in the three district offices, INS examiners sometimes approved an alien's application because they assumed incorrectly that criminal history checks have been completed if no record appeared in the alien's file. However, the results for criminal history reports might have been delayed or not timely filed. We found that under INS' current procedures, examiners could not determine if FBI fingerprint checks had been completed because, at INS' request, the FBI returned a report only if a criminal history record was found. The assumption is that no report means there was no criminal history. According to INS district officials, without a control to ensure that the FBI had completed a fingerprint check, instances have occurred in which aliens with criminal history records have had their applications inappropriately approved.

Background

Aliens applying for permanent residency and naturalization are required to submit completed fingerprint cards with their applications.² INS is to send each fingerprint card to the FBI to determine if an alien has a criminal history. Aliens with criminal history records may be denied benefits depending on the severity of the offenses. During fiscal year 1993, the FBI ran 866,313 fingerprint checks at a cost to INS of \$14.7 million. In addition to the aliens' fingerprints, the fingerprint cards are to contain background

²According to INS, this applies to aliens between ages 14 and 79.

information on the alien, such as name and date of birth. Aliens applying for permanent residency or naturalization are to be scheduled for hearings after they submit their applications.³ According to INS officials, the hearing dates are to be set to allow adequate time for the FBI to complete criminal history checks and to return the results (for aliens with arrest records) to INS.

According to INS officials, aliens can have their fingerprints taken at several locations including, private businesses, the offices of voluntary organizations, police departments, and some INS district offices. INS officials said that prior to the time of the enactment of the Immigration Reform and Control Act of 1986, all INS offices provided fingerprinting services for aliens requesting benefits. However, according to INS officials, most INS offices have discontinued fingerprinting services for a number of reasons, including a lack of staff.

After INS accepts aliens' applications, clerks in INS' district offices are to separate the fingerprint cards from the applications and mail the cards to the FBI. According to the FBI, it checks the fingerprint cards to determine if data on the alien's name, gender, date of birth, and the originating INS district office have been completed. If any of the information is missing, the FBI rejects the card and returns it to the originating INS office, if known, with an explanation for the rejection.

If the background information on the fingerprint card is complete, the FBI checks the fingerprints against its criminal record history database, which contains the names of over 30 million people. If a match is found, the criminal history record is attached to the fingerprint card and mailed to the INS district office that requested the check.⁴ At the request of INS, the FBI does not notify INS if no criminal history record was found.

The FBI rejects fingerprint cards if one or more of the prints are illegible and returns the rejected cards to INS offices with an explanation for their rejection. Even if the fingerprints are illegible, the FBI will run a name check comparing the aliens' name, including background information, to the names in its criminal history database. If no positive identification is found, the rejected fingerprint card is returned to the INS requesting district office. INS officials are to submit a new fingerprint card to the FBI if the original fingerprint card is rejected.

³INS charges a fee to process aliens' applications. The fee varies depending on the type of application.

⁴If the fingerprints do not match, FBI officials said they destroy the fingerprint card and do not send a record to INS.

According to the FBI, it takes about 10 to 14 days to complete a name and fingerprint check for INS (from its receipt of the fingerprint card to the mailing of the results to INS). According to INS officials, INS offices usually receive rejected fingerprint cards or criminal history reports in the mail room. The cards are then taken to the Examinations Branch or Records Department, where they are to be placed in the aliens' files. Criminal history reports are to be placed in the aliens' files before their hearings with INS examiners. INS offices are to allow at least 60 days from the date an alien submits an application until the scheduled hearing date to allow the FBI adequate time to complete a criminal records check, return any adverse results, and allow INS to place those results in the alien's file.

In commenting on a draft of this report, INS officials provided some perspective on the significance of failure to check aliens' fingerprints. According to INS, the ideal situation would be to check the fingerprints of every applicant. Any fingerprint not checked potentially belongs to a criminal or terrorist. However, INS stated that the actual probability that a properly obtained and checked set of fingerprints will result in an alien's application being denied and the alien being deported is very remote. INS pointed out that only 5.4 percent of fingerprint checks result in the FBI having a record on the alien and only a small portion of the 5.4 percent result in an alien's application being denied. While INS recognized that even a relatively small number of aliens should not inappropriately receive benefits, it did not want to give the false impression that a criminal or terrorist receives a benefit every time a fingerprint check is not properly conducted.

OIG Report

The February 1994 OIG report stated that INS did not verify that fingerprints submitted by applicants for naturalization and permanent residency actually belonged to aliens who submitted them. The OIG report also pointed out that INS examiners had approved applications because they assumed that applicants had no criminal history records. According to the OIG report, this occurred because the FBI criminal history records were not in the aliens' files when INS examiners adjudicated the cases. The OIG report also found that INS frequently did not submit new sets of fingerprints to the FBI when the original sets of prints were illegible.

The OIG recommended that INS (1) institute procedures to verify that fingerprints submitted to INS by all applicants belong to the applicants and (2) instruct district directors to ensure that fingerprint cards are mailed

promptly and criminal history reports are placed in the aliens' files before final adjudication.

INS concurred with the OIG findings and recommendations. In May 1994, INS formed a working group to address problems identified by the OIG. The group is composed of representatives from various INS service components and advisers from the FBI and OIG.

Scope and Methodology

To achieve our objectives, we (1) discussed the fingerprinting process with INS officials at INS headquarters in Washington, D.C., and INS' Baltimore, Chicago, and Philadelphia District Offices and (2) reviewed INS records regarding changes to its fingerprinting process. We also observed fingerprinting procedures at these district offices.

We selected the Baltimore and Chicago District Offices because they were included in the OIG report, and, therefore, we could evaluate INS' responses. To provide perspective on the problems the OIG identified, we selected a district office not included in the OIG review. We selected the Philadelphia District Office because of its proximity to Washington, D.C. Specifically, we evaluated INS' actions and plans in response to the problems identified in the OIG report, including the timely mailing of fingerprint cards to the FBI, the timely filing of FBI criminal history reports, and the procedures used to follow up on fingerprint cards rejected by the FBI. Further, we discussed the future impact of automated fingerprinting identification systems with INS and FBI officials.

We discussed FBI processing procedures for alien fingerprints submitted by INS with FBI officials in Washington, D.C. We relied on information in the OIG report and did not verify data provided by INS and the FBI.

We conducted our review from July 1994 to October 1994 in accordance with generally accepted government auditing standards. We obtained oral comments on a draft of this report from INS and the FBI. Their comments are discussed in the agency comments section of this report.

INS Plans Certification Program to Increase Control Over Fingerprint Providers

INS' fingerprinting working group has recommended that INS implement a certification program that would increase control over fingerprint providers. INS headquarters is finalizing a new regulation to establish and implement the certification program. INS expects the regulation to be published by March 1995. According to INS, after a 6-month transition period following publication of the regulation, INS will accept only fingerprints taken by organizations it has certified.

Under the proposed certification program, all organizations, except police departments and the U.S. military, who want to provide fingerprint services to aliens will have to apply for INS certification. Fingerprint providers will have to pay an application fee (currently estimated at \$370). Under the certification process, INS will require that employees, volunteers, directors, and owners of the organizations providing fingerprint services undergo fingerprint checks to determine if they have criminal histories. Depending on the results of the fingerprint checks, an applicant may not be certified. If an application is accepted, INS will certify the provider for 3 years.

INS plans to require certified fingerprint providers to inspect aliens' photo identification and have aliens sign their fingerprint cards at the time the fingerprints are taken. The proposed regulation also will require fingerprint providers to be trained in fingerprinting procedures by INS.

All approved organizations are to be given a stamp that is yet to be developed by INS. The stamp is to serve as a method for notifying INS that prints were taken by an approved provider. The stamp is also to allow INS to identify problematic providers—such as producers of large numbers of illegible prints.

INS plans to monitor fingerprint providers using INS district employees to spot-check local certified providers to ensure that INS procedures are being followed. Under the current draft of the regulation, INS will have the authority to revoke fingerprinting privileges if the agency discovers that a provider is not following INS guidelines. INS plans to use the fees from organizations applying for certification to pay for the monitoring program. According to the draft regulation, INS will monitor one-third of all fingerprint providers each year.

Options Considered but Not Adopted

INS considered other alternatives to the certification program. The working group rejected the option of having the district offices do the

fingerprinting because of resource shortages and the potential for overcrowding in the district offices. Other options included using contractors, police departments, and voluntary groups. The use of contractors was rejected because of potential difficulty in managing nationwide or regional contracts. Using police departments for fingerprinting was not considered feasible because many police departments do not provide fingerprinting services to the public, including aliens. Also, according to INS, some police departments were believed to have a higher rate of rejections than other providers. INS decided not to depend on voluntary groups because there are not enough voluntary groups to do all the fingerprinting. However, these groups may apply for certification.

Electronic Fingerprint Processing May Be a Long-Term Solution

INS said that its long-term solution to the fingerprinting processing problems will be the use of electronic fingerprinting. In this regard, the FBI is developing an Integrated Automated Fingerprint Identification System (IAFIS) that will allow the electronic submission and processing of fingerprints. IAFIS is expected to dramatically reduce turnaround time for fingerprint processing. IAFIS is not expected to be fully operational before mid-1998. INS anticipates the use of IAFIS but will have to purchase hardware to enable the system to transmit information electronically to the FBI. According to INS, it is actively pursuing the use of its own automated fingerprint identification systems to reduce fingerprint fraud and processing time. Also, INS is closely coordinating its efforts with the FBI to ensure compatibility and reduced rejection rates.

Timely Mailing of Fingerprint Cards and Filing of Criminal History Reports Continue to Be Problems

The OIG review of four INS district offices found problems with timely mailing of fingerprint cards to the FBI and timely filing of returned criminal history reports from the FBI. Our review indicated that these problems existed in varying degrees in the three districts we visited. Also, we found that INS examiners assumed a fingerprint check had been completed if a criminal history record was not found in the district office.

In the Chicago District Office, the OIG found that fingerprint cards were allowed to accumulate for 2 to 3 weeks before they were mailed to the FBI. As part of its review, the OIG only examined the files of aliens who had arrest records to determine if INS was properly filing FBI arrest reports in aliens' files. The OIG used an FBI list of aliens who had criminal history records to identify which alien files to review. The OIG found that 29 percent of the 271 files it reviewed in 4 district offices lacked arrest

reports. In the Chicago District the OIG found that 78 percent of the alien files it reviewed did not contain the criminal history reports at the time the cases were adjudicated.

Untimely Submission of Fingerprint Cards

In a March 1994 memorandum to all district directors, INS headquarters directed them to ensure that alien fingerprints are sent to the FBI daily. INS also instructed district directors to ensure that criminal history records received from the FBI are placed in the alien files immediately.

Although INS headquarters instructed its districts to ensure both timely mailing of fingerprints and timely filing of criminal history reports, headquarters had not monitored the districts to ensure that its policies were being properly followed. An INS official said that in the past it was necessary for headquarters to follow up on its directives to ensure that the policies were being followed.

The Baltimore and Chicago District Offices made some changes to improve timely mailing of fingerprint cards. For example, Baltimore district officials said that they recently began separating fingerprint cards from naturalization applications and putting those cards in the mail on the same day that the applications were received. Chicago and Philadelphia district officials said that their fingerprint cards may not have been mailed for 1 or 2 weeks. Chicago District Office officials said they planned to rearrange the routing of applications to expedite mailing of fingerprint cards to the FBI.

In August 1994, the Baltimore District Office began a prototype program in which aliens applying for permanent residency are to send their applications directly to INS' Eastern Service Center in St. Albans, VT. The Baltimore District conducts the hearings, and the INS service center processes the fingerprint cards. Criminal history reports are sent to the Baltimore office before the aliens' hearings. According to a Baltimore district official, although the program is new all indications are that it has resulted in criminal history reports arriving before hearings.

Untimely Filing of FBI Reports

In the three districts we visited, rejected fingerprint cards and criminal history records were received in the mail rooms and transferred to the Examinations Office for filing. However, district officials and examiners at these three districts said that criminal history reports were not always placed in aliens' files before their hearings.

The criminal history report filing systems varied at the three district offices. Chicago district officials said they were reorganizing the filing system, working toward a goal of filing all criminal history reports directly in aliens' files. However, at the time of our review, Chicago was using two filing systems. Criminal history reports were either filed directly in alien files or placed in a central file. As a result, Chicago examiners had to review both the alien's file and the centralized file of criminal history reports before an alien's hearing to determine if the alien had a criminal history record. Baltimore and Philadelphia District Office officials said that criminal history reports were typically filed directly in the aliens' files within 3 working days after they were received so they would be available to the examiners during the aliens' interviews.

Examiners at all three districts indicated that they had incidents in which a criminal history record was not available when the examiner conducted a hearing and granted the benefit to the alien. If examiners become aware of an alien's criminal history record after the initial hearing, the alien may be interviewed again depending on the severity of the offense. This can occur after INS has granted the alien benefits. If the results of the fingerprint checks warrant, INS may rescind the previously granted benefit. The examiners said that the fingerprint checks are important and noted that about half of the time the information provided by the FBI criminal history report is the only information they have about an alien's criminal activity.

Status of Records Check May Not Be Known to INS

Examiners do not have any means to determine the status of an FBI fingerprint check because, at INS' request, the FBI does not return the results of all fingerprint checks. INS receives results only if an arrest record is found. At the time of the alien's hearing, if INS examiners do not find a criminal history report in an alien's file and it is 60 days after the application date, the examiners assume that a fingerprint check has been completed and that the alien does not have a criminal history record. According to an INS official, they do not receive negative responses from the FBI because the district offices do not have enough staff to file FBI responses for all aliens. According to the FBI, they could provide INS with the results of all records checks in other formats (e.g., electronically), including those for whom it did not find criminal history records.

Submission of New Fingerprint Cards Continues to Be a Problem

During fiscal year 1993, the FBI rejected and returned to INS 91,827 fingerprint cards, or 11 percent of all INS submissions, because one or more of the prints were illegible.⁵ The OIG determined that INS district offices frequently did not submit new fingerprint cards for those aliens whose fingerprint cards were rejected. Since INS failed to submit new fingerprint cards, in a number of cases applications were adjudicated on the basis of criminal history name checks but without the results of the FBI fingerprint checks.

In April 1994, INS headquarters instructed district directors to ensure that new fingerprint cards are submitted if the initial card is rejected. However, according to INS officials at the three districts we visited, these district offices rarely submitted new fingerprint cards if the initial card was rejected.

Conclusions

INS' decision to implement a certification program for fingerprint providers with the proposed procedures for ensuring fingerprint integrity, if properly implemented, should address the OIG's first recommendation. The program should help ensure that the fingerprints aliens submit with applications are their own. Further, INS plans to periodically monitor the providers, which should help to maintain the integrity of the fingerprint process.

INS headquarters had directed its district offices to timely submit fingerprint cards to the FBI and file FBI criminal history reports in aliens' files. However, there are problems to varying degrees in the Chicago and Philadelphia Districts. Also, officials at the three district offices said they rarely submitted new fingerprint cards if the initial cards were rejected by the FBI. According to the OIG report and INS officials, some aliens' applications had been approved because the examiners did not receive, and therefore were not aware of, aliens' criminal history records. They said that if the examiners had been aware of the information contained on the criminal history records the applications could have been denied.

INS had told the district offices to correct the problems but had not monitored the districts' efforts to follow those instructions. Without some form of monitoring, INS cannot be certain that the district offices will correct the problems.

⁵The FBI also rejected an additional 4 percent of INS-submitted fingerprint cards because descriptive information such as name, date of birth, and/or INS office identifying number were incomplete.

At INS' request, the FBI returned information to districts only if an alien had a criminal history record or if the fingerprints were rejected. As a result, INS was not notified if a fingerprint check was successfully completed and no criminal record was found. If no information was in the aliens' files or in a central location, examiners assumed that the aliens did not have criminal history records. As noted earlier, this assumption can be incorrect.

Recommendations

We recommend that the Attorney General direct the Commissioner of INS to

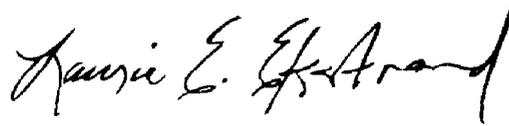
- monitor progress to ensure that districts comply with INS' headquarters directives to submit fingerprint cards to the FBI on a timely basis, file FBI arrest reports in aliens' files immediately, and submit new fingerprint cards to replace those that are rejected by the FBI and
- obtain the results from the FBI of all its record and fingerprint checks, including those aliens who do not have criminal history records and make the results available to the examiners before the aliens' hearings.

Agency Comments

On November 9, 1994, we obtained oral comments on a draft of this report separately from INS and FBI officials. We met with INS representatives, including the Acting Associate Commissioner for Examinations, who is responsible for INS' adjudication of applications which requires aliens to be fingerprinted. We also met with FBI officials, including the Deputy Assistant Director of the Criminal Justice Information Services Division, who responds to INS' requests for criminal records checks of aliens. They agreed with our findings, conclusions, and recommendations and provided clarifications and technical corrections, which we included in the report.

We are providing copies of this report to the Attorney General; Commissioner of INS; Director, Office of Management and Budget; and other interested parties. Copies will also be made available to others upon request.

Major contributors to this report are James M. Blume, Assistant Director; Mark A. Tremba, Evaluator-in-Charge; and Jay Jennings, Assignment Manager. If you need any additional information or have any further questions, please contact me on (202) 512-8777.



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