



INMATES AND IMMIGRATION: THE FEDERAL BUREAU OF PRISONS QUOTA MANDATE

BY

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A few months ago, NCIA assisted an attorney in Federal Court in the Southern District of New York on the sentencing of a foreign national. The defendant, a citizen of Switzerland, had reluctantly pled guilty to a white collar offense and received a 16 month sentence. The defense attorney had successfully negotiated with the government that it would not oppose an application for a treaty transfer, so the defendant could possibly serve his sentence in his home country. Self-deportation was also recommended to avoid the Immigration and Customs Enforcement (ICE) experience at the end of his prison sentence. The Court did not oppose these recommendations.

Because of his immigration status, he was ineligible for a Federal Prison Camp. Based upon our experience and knowledge of Federal Bureau of Prisons (FBOP) facilities, we suggested to his defense attorney to ask the Court to recommend that he be designated to the FCI in Butner, North Carolina. We asked the Court for the Butner recommendation as we wanted an FBOP facility versus a contract immigration prison, and felt the staff at FCI Butner would be more amenable to processing a treaty transfer application. Based in part upon the Court's recommendation, the FBOP designated him to FCI Butner, and he surrendered as ordered.

After six weeks of working with his case manager on his treaty transfer application, our situation took a drastic turn for the worse. Our client was told he was being transferred to Moshannon Valley in Central Pennsylvania, a privately contracted federal facility for inmates who are likely to be deported. Despite the best efforts of his attorneys and NCIA, he was removed from Butner and has now been transferred to the FBOP contract facility in Moshannon Valley.

Having worked around the FBOP system for over three and a half decades, this transfer perplexed me. Why would the FBOP take an inmate out of his current facility, which is within his custody classification, and move him into a more expensive, privately contracted facility, where his chances of getting a treaty transfer are minimized? It made no sense.

Then, in late September, I read an article in *Bloomberg News*. It has come to light that since late 2009, federal officials have been operating under a *statutory* quota of 34,000 inmates in private immigration facilities. Apparently, then-Senator Robert Byrd (D-WV), inserted a change into the Homeland Security Department's spending bill mandating this quota, at a cost of \$120 per day.

In February of this year, Texas Republican Michael McCaul, the House Chairman of the Homeland Security Committee, called ICE officials on the carpet because they only had 30,773 inmates in private facilities and told them they were in "clear violation of statute." Hence the push to take anyone with an immigration issue and place them in private facilities.

The winners? The private corrections providers like GEO Corporation and Corrections Corporation of America, and the hundreds of thousands of dollars they contribute to political campaigns. The losers? Taxpayers and nonviolent offenders like my client who just want to go to their home country without having to spend time in poorly-run immigration facilities.

I would appreciate knowing your thoughts or experiences in dealing with the FBOP regarding the imprisonment of foreign nationals. Please send back your ideas and comments so I can share them with our readership.

Also, should you have questions regarding immigration or deportation issues within the Federal Bureau of Prisons, feel free to contact me.



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