



U.S. Immigration  
and Customs  
Enforcement

MAR 27 2006

MEMORANDUM FOR: Field Office Directors

FROM: John P. Torres  
Acting Director  
Office Of Detention And Removal Operations

SUBJECT: Detention and Deportation Officer's Field Manual  
Update: Chapter 1

We have revised the Introduction to Detention and Removal Operations Policy and Procedure Manual (DROPPM); formerly the Detention and Deportation Officer's Field Manual, or DDFM). As you know, the DROPPM contains 29 chapters with 54 appendices and more than 2,100 hyperlinks, including but not limited to internal cross-references, other field manuals, regulations, relevant resources and references, contact information, and forms. The DROPPM is available online at (b)(2)High and on I-Link, which has replaced INSerts.

Please remember that the DROPP is the only approved source of DRO policy and procedures. This hyperlinked manual, properly used, can save you and your officers hours of research and legwork (identifying, locating, and downloading forms; researching statutory and regulatory language, etc.)

Chapter 1, Introduction, now includes section 1.1, "Creating and Updating Policy" and section 1.2, "Policy Dissemination." The entire chapter, as updated, is attached.

## Chapter 1: Introduction

This manual<sup>\*</sup> is the official “who, what, when, where, why” guide to the Office of Detention and Removal Operations (DRO). Use it for ready access to information critical to the work you and your colleagues perform. A virtual sourcebook, it will guide you to and through policies, procedures, and background documents.

At the click of a mouse, you can pursue any issue as deeply or broadly as you choose. Hyperlinks punctuate every chapter. Use them to review regulatory and statutory language, guidance documents, policy statements, memoranda, handbooks, manuals, legal opinions, postings by other agencies and organizations, and other material at the core of the DRO program.

The contents of Detention and Removal Operations Policy and Procedure Manual (DROPPM) represent official DRO policy. To the extent that any material conflicts with or otherwise differs from previous issuances, this manual will be the controlling document.

The electronic format means we can “publish” a manual as comprehensive as technology permits. With the help of the web, updates occur in real time. This format affords us the flexibility to respond to constructive criticism and comments, developing this living document into the reliable, definitive, user-friendly guide that field officers, analysts, managers, and senior officials will find indispensable.

Chapters vary in length. The goal is to keep them as succinct as possible. If the primary documents are complete and self-explanatory, then a chapter may consist of no more than an explanatory paragraph and a single hyperlink. When issues are complex or confusing, the text will be as extensive as necessary to clarify and add value to the source material (regulations, legislation, handbooks, etc.).

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I-LINK reflects updates to DROPPM, incorporating new or revised policies or procedures. Procedures and policies issued through cables or memoranda that have not been incorporated into a chapter of DROPPM are no longer in effect.

The program office responsible for the subject matter is responsible for preparing DROPPM updates, in accordance with the procedures described in **AVM-2103**.

Chapters of the manual itself are grouped as follows:

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<sup>\*</sup> referred to previously as the Detention and Deportation Officer’s Field Manual

Chapters one and two constitute a basic introduction, with Chapter 2 providing a contextual overview of the Detention and Removal program. Chapter 2 describes the program from its roots in the Immigration and Naturalization Service of the Department of Justice to its integration into the Department of Homeland Security in March 2003.

Subsequent chapters appear in Parts I through IV.

Part I presents the policies and procedures that govern the removal process.

Part II presents detention-related policies and procedures (standards) that apply to detention officers; detainee services, including medical care; and to the facilities housing INS detainees.

Part III provides policy and procedures relating to official property: weapons, vehicles, communications, fingerprinting, uniforms, and records.

Part IV focuses on the administration of the Detention and Removal program.

Please send suggestions for improvements, including omissions, to the "DRO Policy and Procedure Manual" mailbox. Enter "DROPPM" in the subject line of the message.

## 1.1 Creating and Updating Policy

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- Use the DROPPM Table of Contents to determine where your update belongs.
- Research your subject. Consult subject-matter experts and legal advisors.
- Draft new material in a straightforward, action-by-action format. Use plain English in the active voice: no jargon, no passive verbs. Write as

if you are explaining the policy to a new hire. This means using the second person (“You do this . . . then you . . .”). Do not say, “The officer shall.”

- Link to or create the form(s) necessary for the implementation of your new policy.
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- The memorandum will become official policy only when signed by the Director, Office of Detention and Removal Operations.

## 1.2 Policy Dissemination

DRO will issue a broadcast message announcing the change/update to the DROPPM. Each broadcast message will include a link to the DRO memorandum posted on the DRO website: (b)(2)High.

NOTE:

Nothing in this manual may be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States, its agencies or officers, or any other person.

~~LIMITED OFFICIAL USE~~

Portions of this manual are considered sensitive and may not be released to the public. The contents of these sections are exempt from disclosure under the Freedom of Information Act. Officers using this manual and the I-LINK system must take appropriate steps to safeguard these restricted materials. Those sections of this manual which are not restricted may be accessed on the ICE Internet web site. Inquiries relating to the release of other materials should be directed to the Headquarters Freedom of Information/Privacy Act Unit, see

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# Detention and Removal Operations

## DRO Policy and Procedure Manual Table of Contents

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To use the Table of Contents below, click the chapter heading for which you wish to see more information and its subsections will open in a list below. Click the subsection to view its respective page and contents.

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## **Chapter 1: Introduction**

1.1 Creating and Updating Policy

1.2 Policy Dissemination

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## **Chapter 2: Detention and Removal Operations**

### 2.1 History

### 2.2 Vision and Mission Statements

### 2.3 Overview of Operations

### 2.4 Strategic Planning

### 2.5 Organizational Chart and Chain of Command [Reserved]

### 2.6 Core Business Functions

References:

Appendix 2-2 Office of Detention and Removal Program Description

Appendix 2-3 DRO Strategic Plan, 2003-2012: Endgame

Appendix 2-4 Endgame Easy Reader

This chapter provides the reader a general overview of the Detention and Removal program. The Program Description describes the history of the development of the program as well as an overview of the immigration enforcement operations within which it plays a critical role. Sections 2.2 and 2.4 describe the strategic planning process and the reader can access the full 10-year strategic plan at the link above of the abridged version at Endgame Easy Reader.

#### 2.1 History

A brief history of the Office of Detention and Removal is provided in Section 1 of the DRO Program Description (Appendix 2-2).

#### 2.2 Vision and Mission Statements

The DRO Vision and Mission statements are defined in both the DRO Program Description (Appendix 2-2) and Endgame (Appendix 2-3).

#### 2.3 Overview of Operations

An overview of DRO operations is provided in Section 3 of the DRO Program Description (Appendix 2-2).

#### 2.4 Strategic Planning

A brief description of DROs strategic planning process is provided in Section 4 of the DRO Program Description (Appendix 2-2).

#### 2.5 Organizational Chart and Chain of Command

DRO organizational chart

## 2.6 Core Business Functions

DRO has two core business functions: removal and custody management. These two functions and supporting key processes are explained in Section 6 of the DRO Program Description (Appendix 2-2).

# Chapter 3: Homeland Security Advisory System

## 3.1 Homeland Security Presidential Directive

### 3.2 Threat Condition Procedures

### 3.3 Continuity of Operations Plans

References:

Other: U. S. Immigration and Naturalization Service Threat Conditions Handbook (TCH), November 2002; Homeland Security Presidential Directive 3, President George W. Bush, March 12, 2002, as published in Appendix 1, of the TCH; Continuity of Operations Plan (COOP) (Example), as published in Appendix 2, of the TCH.

### 3.1 Homeland Security Presidential Directive.

On March 12, 2002, the White House Office of the Press Secretary released Homeland Security Presidential Directive<sup>3</sup>. This document established the Homeland Security Advisory System; a directory of color-coded threat-condition indicators intended to assist agencies of the federal government in developing a specific set of protective measures to be invoked in response to each threat condition. Implementation of the system is binding on the executive branch of the federal government and is recommended for use by other levels of government, and the private sector as well. Additional information is available at <http://www.whitehouse.gov/news/releases/2002/03/20020312-5.html>.

### 3.2 Threat Condition Procedures

In order to comply with the requirements of the Presidents Homeland Security Advisory System, INS developed the Threat Conditions Handbook (TCH). This document describes the actions to be taken by each program, in accordance with the current threat-level condition. For each threat level, the TCH lists the actions to be taken by the offices of Field Operations, Inspections, Intelligence, Detention and Removal, Investigations, Border Patrol, Immigration Services and International Affairs. The TCH is included as Appendix 3-1 of this Field Manual.

The comments of the Executive Associate Commissioner for Field Operations in the forward to the TCH define the phrase, commensurate with the threat. Generally, this phrase is used to emphasize that each location must individually assess local conditions,

in addition to any known nationwide threat, in determining how to respond to each threat level.

### 3.3 Continuity of Operation Plans

Each program within the agency, as well as each physical office location, is required to develop and publish a Continuity of Operations Plan (COOP). The purpose of this plan is to ensure that essential services performed by the program or location continue at the highest level possible, in the event of an emergency or natural disaster that disrupts any portion of the infrastructure upon which the program or location relies.

Development of the COOP initially requires that the normal scope of operations in that program or at that specific office location be described. This description must include a listing of the normal duties of the program or location, and the consequences should the program or location be unable to perform these duties. The COOP must also provide an inventory of the normal staffing available to perform these duties, as well as an inventory of those other physical resources typically devoted to the tasks assigned to the program or location. The COOP must then describe various alternative plans for accomplishing the duties of that program or office, in the event the resources upon which that program or office location ordinarily relies are in some way disrupted.

A sample COOP is included within the INS Threat Conditions Handbook in [Appendix 3-1](#) of this Field Manual.

## **Chapter 11: Removal Process: Docket Control**

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- [11.2 Review Custody Conditions](#)
- [11.3 Initiation of Detention and Removal Actions](#)
- [11.4 Deportable Alien Control System \(DACCS\)](#)
- [11.5 Docket Management of Detained Cases](#)
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- 11.21 Applicants for Naturalization
- 11.22 Intra-Departmental Cooperation [Reserved]

References:

INA: 207, 208, 209, 210, 236, 239, 240, 245a

Regulations: 8 CFR 207, 208, 209, 210, 236, 239, 240, 245a

Other: DACS Users Manual, Records Operations Handbook, Adjudicators Field Manual, Chapter 23 and Special Agents Field Manual, Chapter 14.

11.1 Preliminary Custody Conditions.

(a) Arrest and Detention. When initiating removal proceedings, you will face decisions relating to arrest and detention. For rules of detention, detention prior to completion of removal proceedings, and special detention cases, refer to the Special Agents Field Manual, Chapter 14.3, Detention and Bond Determinations.

(b) Orders of Recognizance. The district director has the discretion to release adult and juvenile aliens from detention on an Order of Release on Recognizance, Form I-220A. Clearly state all conditions of release set by the district director on the I-220A.

(c) Reporting Requirements for Aliens Released on Orders of Recognizance.

(1) Adults. If a condition of the release is that the alien is to report to the Service on a regular schedule, the Deportation Officer shall make the Deportable Alien Control System (DACS) "Case Call-up" date coincide with the reporting date on the Form I-220A. This will serve as a compliance reminder to the officer of the alien's duty to report as ordered. Compliance with the reporting requirements of the Order must be noted on the continuation page/addendum of Form I-220A and in the "Case Comments" section of DACS each time the alien reports. If at any time you determine that the alien has failed to report as required or violated any other condition set, the district must take appropriate corrective action, including detention. If the alien has failed to appear, refer the case to the Fugitive Operations team, if one exists in your area. The Fugitive Operations Team will prioritize the case based on the National Fugitive Operations policy (Chapter 19, below) unless otherwise directed by the District Director. In the absence of a Fugitive Operations team, the District Director should utilize available resources within the district's enforcement divisions to locate the alien consistent with pertinent local and national priorities.

In addition, the District Director shall refer the case to the Law Enforcement Support Center (LESC) for immediate entry into the National Crime Information Center (NCIC). The LESO shall give the case priority consideration. In cases in which the alien has been located and detained, the District Director should re-determine conditions, if any, under which the alien will be released, including the setting of an appropriate bond.

(2) Juveniles. If a juvenile is to be released from detention pursuant to 8 CFR 236.3 on an Order of Recognizance to the custody of an accompanying alien relative or authorized legal guardian who is placed into immigration proceedings, or to an alien relative or authorized legal guardian already in the United States and in immigration proceedings, the juvenile should have the same reporting requirements as the relative or authorized legal guardian. If the relative or authorized legal guardian is released on a bond or is currently on a bond and is not required to regularly report, the juvenile should not be required to regularly report. If unusual circumstances present themselves, and it is determined that the juvenile should be required to regularly report, a bond demand must be made on the obligor of the relative's or authorized legal guardian's bond to have the relative or authorized legal guardian appear on the same date and at the same office as the juvenile.

(3) Notification to District Counsel. Additionally, any time an individual required to report fails to appear, the case officer must notify District Counsel. This will provide the attorney needed information for the ongoing immigration proceedings.

(d) Parole. The district director may grant an arriving alien parole from Service custody for urgent humanitarian reasons or significant public interest, if the alien demonstrates that he/she does not pose a security risk, is not likely to abscond, and complies with any special conditions, such as posting a bond. (See 8 CFR 212.5.) You must issue any parolee a Form I-94, Arrival Departure Record.

## 11.2 Review Custody Conditions.

Before the conclusion of removal proceedings, an eligible alien may request a custody or bond re-determination by an immigration judge (see 8 CFR 3.19(a)). The initial request may be submitted orally or in writing by the alien or legal representative. Any subsequent request must be in writing, and must establish a material change in circumstances warranting the requested re-determination. See 8 CFR 3.19(e). Both the Service and the alien may appeal the immigration judges custody decision to the Board of Immigration Appeals (see 8 CFR 3.38). For procedures regarding emergency stays and automatic stays in Service appeals, see 8 CFR 3.19(i).

### 11.3 Initiation of Detention and Removal Actions.

(a) General. The actions of Detention and Removal begin with receipt of an A file and, in some cases, an alien. Most cases are generated through an arrest made by other programs such as Border Patrol, Inspections, and Investigations. An alien who is processed for a removal hearing is considered to be under docket control. Cases under docket control are tracked and managed by Detention and Removal through the utilization of the Deportable Alien Control System (DACS). See Chapter 11.4, below.

(b) Reviewing the A file. There are several steps involved in reviewing an A file and they are as follows:

(1) Verify name and A number on documents match the A file number. You may find documents in the file that do not correspond to the name and A number so you must check the folder itself to verify whether those documents were consolidated into the existing A file. If a file has been consolidated in the past, the folder should be stamped or written with the date and A number(s) that were consolidated. You will also check the Central Index System (CIS, see chapter 36.4) to verify the name and A number match. Should the entry not exist, you must notify your Records Administrator.

(2) Verify whether the alien is in custody by checking the custody screen in DACS. (See 4.5.2 of the DACS User Manual, appendix 36-1.) The command used to retrieve this screen is CUST. In an attempt to ensure accuracy of the (b)(2)High screen, look for Form I-385, Alien Booking Record or Form I-203, Order to Detain or Release Alien, in the file. At times you will find an error occurred during booking so the (b)(2)High screen in DACS will not reflect the detention, yet the alien is detained.

(3) Check for, and consolidate, other existing files on the same person. Should you find that other A files exist on the same person, you will request those A file(s) for consolidation. You can search for other existing files through queries on various databases, such as the National Crime Information Center (NCIC), and the Central Index System (CIS). It is important to verify the identities are one and the same. Verification can be accomplished through photos and fingerprint comparisons and a sworn statement from the alien.

(4) Check for Attorney Representation. Form G-28 is the form used by attorneys or representatives to inform the Service that the alien is represented. In some instances the



aliens attorney may file the EOIR-28 with the Service which is technically the notice of appearance as representative before EOIR.

(5) Review the charging document. A charging document is the form used to list the allegations and violations of Immigration law committed by the alien. The Notice to Appear (I-862) is the most commonly used charging document. Prior to April 1, 1997, an Order to Show Cause (OSC) was used as a charging document and there are existing cases still pending removal which were filed with an OSC. There are also I-122s for previously filed exclusion proceedings.

Verify that the aliens detention address is on the charging document if it is a detained case.

Verify that the A file contains an up-to-date (within 90 days), fingerprint-based criminal history (a name and date of birth checks do not qualify). If you need to provide or update a criminal history, you can run a criminal-history check through the Interagency Border Inspection System (IBIS), Treasury Enforcement Computer System (TECS) or National Crime Information Center (NCIC). Tab and date every criminal history check you generate. See Chapter 4.7 of the Special Agents Field Manual and Chapter 33.1 of the Inspector's Field Manual.

Ensure that the signatures on the charging document are originals and are signed by authorizing officials as required by 8 CFR 239.1.

For a non-detained case, verify the address listed on the charging document is a U.S. address.

Review the charges alleged on the charging document to ensure accuracy. Alleged criminal convictions must be confirmed through certified judgement and conviction documents.

(6) Review the custody conditions. Custody conditions relate to the bond amount, if any. Also see 11.1 Preliminary Custody Conditions and Chapter 12 Bond Management.

(7) Create the A file in the Deportable Alien Control System (DACS). See Appendix 11-1, Creating an A file in DACS (detained and non-detained).

(8) Review the A file construction. Refer to Records Operations Handbook II-24 Record of Proceedings. Also see Appendix 11-2, A File Construction, for a specific listing of forms and their location within an A file.

Record of Proceeding documents are filed with the Immigration Court and are identified as all forms and documents associated with the legalities of detention (e.g., Warrant of Arrest) as well as with identifying the aliens immigration status (e.g., Notice to Appear, Form I-862). The Notice to Appear, which is the charging document, lists the

allegations and violations of law of which the alien is being accused. Place such documents on the left side of the A file.

Administrative forms and documents include all records not considered part of the Record of Proceeding (e.g., Form I-213, Record of Deportable Alien). Place these on the right side of the A file.

(9) Forward the file to District Counsel for review. District Counsel will review the charging document for legal sufficiency. Enter the case in DACS prior to forwarding the file.

(10) Forward the approved charging document (Notice to Appear) to the Immigration Court (also known as the Executive Office for Immigration Review, or EOIR) for the scheduling of a hearing.

(c) Deportation Case Check Sheet (Form I-170). For each case placed under docket control, place a new Form I-170, Deportation Case Check Sheet, on the top of the non-record side of the file (on the right). As actions listed on Form I-170 are completed, check the appropriate box and provide the date and your initials. Periodically review the I-170 to monitor progress, taking whatever steps necessary to keep the removal process on track.

#### 11.4 Deportable Alien Control System (DACS).

(a) General. DACS is the Services automated system for maintaining/managing cases associated with the arrest, detention and removal of illegal aliens. The purpose of DACS as it relates to docket management is to provide for the uniform control and tracking of cases in which removal/deportation proceedings will or may be commenced. Control of docketed cases is maintained at one of the designated docket control offices. Creating the file, updating and closing a file in DACS is a function and responsibility of Detention and Removal. For the DACS Help Desk phone number, see Appendix 1-1.

(b) Entries. For instructions on how to access, enter data, and use DACS, see the Deportable Alien Control System User Manual (Appendix 36-1 of this manual). Appendix 11-1 lists screens to complete when entering detained and non-detained cases into DACS. With regard to absconder-related cases, see Use of New Special Class Codes in DACS, the Executive Associate Commissioners memorandum dated April 10, 2003 (Appendix 11-3).

(c) Docket Control Office (DCO). The DCO has jurisdiction over a case and/or possession of the A file. See Appendix K of the DACS User Manual for a listing of Docket Control Offices.

(d) Call-up Dates. Call-up dates as they pertain to DACS and the management of a docket will be used as a guide to determine when a file needs to be reviewed. As a general rule, the call-up date should reflect a point in time in which the case needs to be reviewed (i.e.

a hearing date). See exhibits 4-35 to 4-40 in the DACS User Manual for the various ways of requesting a case call-up through DACS.

(e) Closure of Cases under Docket Control.

(1) Transfer a Case. For situations in which a detained alien bonds out or is released on an Order of Recognizance, an Order of Supervision, or on Parole, the Docket Control Office (DCO) will update all pertinent information in DACS and transfer the file to the DCO becoming responsible for the case. When a file is transferred to another DCO, the (b)(2)High screen (see 4.3.8 of the DACS User Manual) should reflect the transfer.

(2) Removal/Deportation. When an alien is removed, you are responsible for entering the appropriate data into DACS to close the case. See Appendix B of the DACS User Manual for a list of the appropriate codes.

(3) Case Closures. Update and enter all pertinent information before closing a case. Use the codes under (b)(2)High in Appendix B of the DACS User Manual. Note: "P" for "Policy Closure" has been discontinued. As a result, the code "P" (b)(2)High is not an option. If a charging document has been improperly issued, but has not been filed with (b)(2)High and the case has been entered into DACS, you may close out the case by entering (2)High, Charging Document Canceled by INS. The "E" code in the (b)(2)High does not require a (b)(2)High

(f) Inquiry Screens. DACS contains several screens that are used for inquiries only. (b)(2)High (b)(2)High, see 4.5 of the DACS User Manual) is the command used in DACS to obtain the inquiry menu. The most commonly used inquiry screens are:

(b)(2)High screen (custody screen, see 4.5.2 of the DACS User Manual). This screen provides all custody information related to an A number.

(b)(2)High screen (Executive Office for Immigration Review or Immigration Court, see 4.5.13 of the DACS User Manual). This screen provides information related to proceedings before the Immigration Court (i.e. hearing dates, decisions, and appeals). An A number is required for this type query.

(b)(2)High screen (Look case, see 4.12.2 of the DACS User Manual). This screen allows you to view information on any case for which you have the A number.

(b)(2)High screen (b)(2)High (b)(2)High (b)(2)High

(g) (b)(2)High The (b)(2)High allows you to enter data and conduct status queries regarding any case for which you have the A number. Enter (b)(2)High for access to the following four screens:

(b)(2)High

, containing decision and hearing data

(b)(2)High

containing Board of Immigration Appeals (BIA) data

(b)(2)High

which contains motion to reopen data

(b)(2)High

which contains court actions

Remember to update the data every time a decision is announced.

(h) Case Acceptance. The command to accept a file in DACS is (b)(2)High (see [4.3.11](#) of the DACS User Manual). This screen allows you to accept a case in DACS when it has been transferred to your location from another. A docket control office (see [Appendix K](#) of the DACS User Manual) not listed on the (b)(2)High screen of DACS is unable to enter and update information in DACS for that given A file. Upon accepting a file in DACS, your office code will show as the docket control office on the (b)(2)High screen and you will be able to update and enter data for that case.

#### 11.5 Docket Management of Detained Cases.

(a) General. Detained docket cases consist of aliens who are in custody. For those aliens being detained who are not entitled to an immigration hearing (i.e. reinstatements, administrative removals, visa waiver and expedited removals), you will take the necessary steps to accomplish the timely removal of such aliens. Administrative Removals and Reinstatements are discussed in [Chapters 14.7](#) and [14.8](#) of this manual.

(b) Review the A file. See [11.3](#), above. In addition to the steps mentioned in section [11.3](#) you will also check for the following:

Is the alien requesting some sort of relief or are they claiming fear to return to their country and requesting asylum? See [11.19](#) below and [Chapter 20.2](#) of this manual.

Review the custody conditions ([Form I-286](#)); Will the alien be allowed to post a bond? See [Chapter 12](#) of this manual.

Is this a special interest case due to the aliens nationality or citizenship? See [11.11](#), below. Keep in mind that for some special interest cases, you must notify the FBI of the aliens detention.

(c) Creating the file in the Deportable Alien Control System. Several screens within the DACS system require data input for the creation of an A file. See [Appendix 11-1](#) of this manual for detailed instructions. Also see the DACS User Manual, [Appendix 36-1](#).

(d) Book an Alien into Custody. The Detention Summary screen (see [4.4.1](#), (b)(2)High in the DACS User Manual) in DACS allows for the booking in and out of an alien.

(e) Change of Address Form (EOIR-33) and Notice to EOIR: Alien Address (Form I-830). Upon the release of an alien from custody, you must verify that the alien was provided with Form EOIR-33 and that your Immigration Court (also known as the Executive Office for Immigration Review) was provided with Form I-830. Most Immigration Courts now require that you send Form I-830 electronically (via cc mail to an address that corresponds with your area). You will need to verify what procedure your area is using since not all Immigration Courts are receiving the I-830s electronically. In all cases, a copy of Form I-830 and EOIR-33 (signed by the alien) will be placed in the file.

Change of Address Form (Form EOIR-33): This form allows the alien to submit any changes to his/her address directly to the Immigration Court. The Immigration Court will document the change and forward correspondence to the new address.

Notice to EOIR: Alien Address (Form I-830): This form notifies the Immigration Court of any change to the aliens custody condition (i.e. released on bond, transferred to a new location for detention) and provides the court with the aliens address and telephone number.

(f) Executive Office for Immigration Review (EOIR) screen in DACS. The command to access this screen in DACS is EOIR. This screen allows you to view information related to proceedings. It is your responsibility to monitor this screen for changes and updates on hearings, and hearing decisions. See the DACS User Manual, Exhibit 4-59.

(g) Bonds. See Chapter 12, Bond Management. An alien who bonds out or is otherwise released and awaiting his/her hearing will then be monitored as a non-detained case. See 11.6, below.

(h) Removal of an Alien. Final Orders of Removal and Preparation for Travel are discussed in Chapters 15 and 16 of this manual.

#### 11.6 Docket Management of Non-Detained Cases.

(a) General. The Non-Detained Docket consists of cases in which the Service does not detain the alien. Whenever an alien bonds out of custody, is released on an order of recognizance, or is otherwise released, his/her case is then managed under a non-detained docket. Review of the A file and possible consolidation of files is covered in 11.3, above.

(b) Steps involved upon receipt of a non-detained case include:

Receive the file in RAFACS (see II-10 of the Records Operations Handbook);

Review the file for accuracy (see 11.3, above);

Create A file in DACS (see Appendix 11-1 of this manual);

Forward the file to District Counsel for review;

Forward the charging document to the Immigration Court; and

Review your (b)(2)High and the (b)(2)High screen in DACS (see 11.3 and 11.4, above).

(c) Removals Ordered by the Immigration Judge. First, verify that no appeal is pending. Then, if no bond is involved and no appeal has been filed, you will prepare Form I-205, Warrant of Removal; Form I-294, Warning to Alien Ordered Removed or Deported and Form I-166, Notice to Deportable Alien to Surrender. If the alien fails to appear by the specified surrender date, transfer the file to the District Office with jurisdiction over the aliens place of residence.

For cases involving bonds, see Immigration Bond Management (Chapter 12, below).

If the case involves a fugitive alien, see Chapter 19, Removal Process: National Fugitive Operations Program (NFOP).

(d) Transfer of Files. When transferring a file to another docket control office (DCO), update all information in DACS and use the CLOS screen in DACS to transfer the file. See section 4.3.8 of the DACS User Manual. Situations in which you will need to transfer an A file include, change of venue, the aliens last known address (subsequent to a removal order) is in another jurisdiction, or another office is requesting the file for consolidation or review.

11.7 Alternatives to Detention. [Reserved]

11.8 Institutional Removal Program (IRP) Procedures.

(a) The Program. The IRP deals with aliens incarcerated in federal, state, county, or local jails. By securing a final order of removal before an aliens release from incarceration, the IRP expedites the processing and placing in proceedings of these criminal aliens. (See sections 238(b), 238(c)(5), 240(d) and 241(a)(5) of the Act.

Carefully consider the following alternative removal procedures before issuing a Notice to Appear (NTA) for a removable alien in an IRP facility. Any of these alternatives will significantly reduce the number of detainees in Service custody:

administrative removal (Section 238(b) of the INA).

judicial order of removal (Section 238(c)(5) of the INA).

stipulated removal (Section 240(d) of the INA).

reinstatement of final order (Section 241(a)(5) of the INA).

For information on administrative removals without a hearing, see Removal Process: Non-Hearing Removal Cases, Chapter 14, below.

(b) Aliens Ineligible for Alternative Removal. If an alien does not meet the criteria for alternative removal, you must prepare and serve an NTA (see section 239 of the INA).

(c) Responsibilities of the Institutional Removal Program (IRP). The following procedures apply at all IRP locations:

Identify foreign-born inmates;

Interview; establish alienage;

Conduct extensive records checks in Central Index System (CIS), Deportable Alien Control System (DACS), National Crime Information Center (NCIC), Computer Linked Application Information Management System (CLAIMS), Non-immigrant Information System (NIIS);

If needed, open a new A-File and create record in CIS (see Records Operations Handbook, Part II-03, Creating A-Files);

Locate, order, receive and review original Service file upon receipt;

Issue Form I-247, Immigration Detainer-Notice of Action;

Process criminal aliens for removal proceedings;

Prepare cases and charging documents for removal proceedings;

Schedule removal hearing with Executive Office for Immigration Review (EOIR);

Maintain and update DACS data entry (see Chapter 11.4, for DACS data entry, or the DACS Users Manual, IRP, Appendix 36-1, 4.3.10);

Obtain fingerprint cards and photographs for Service file;

Submit fingerprint card to FBI (see Special Agents Field Manual, Appendix 16-1);

Prepare travel document request and complete Form I-217, Information for Travel Document or Passport;

Enter criminal alien into Automated Biometric Identification System (IDENT) prior to removal;

Close case in DACS (see Case Closing Actions, Chapter 15.5, below);

Prepare and forward Service file to Law Enforcement Support Center (LESC) for entry into NCIC. (See also National Fugitive Operations Program (NFOP), [Chapter 19](#), below.)

### 11.9 Special Detention Cases: Juvenile Aliens.

The standards governing the treatment of juvenile aliens in Service custody from arrest to release or removal are wholly contained in Juvenile Aliens: A Special Population, [Appendix 11-4](#) (hyperlinks to individual chapters are provided below). The standards were specifically developed to ensure the safe, secure and humane treatment of detained juveniles. These policies and procedures set forth the Services expectations of officer conduct during the any encounter with a juvenile alien, whether processing, detaining, releasing, or removing that juvenile. They likewise state the standards with which facilities housing juveniles in INS custody must comply.

[Introduction Juvenile Detention and Shelter Care Program](#)

[Procedures for the Arrest and Detention of Juvenile Aliens](#)

[Special Issues and Special Populations](#)

[Non-secure and Secure Juvenile Facilities](#)

[Inspection Standards for Juvenile Shelter Care and Secure Juvenile Detention Facilities](#)

[Transportation Requirements](#)

[Legal Requirements Representation](#)

[Escapes and Other Emergency Incidents](#)

[Medical Issues](#)

[Jenny Lisette Flores, et al. v. Janet Reno Stipulated Settlement Agreement](#)

[Perez-Funez Rights Advisal](#)

[Referral for Home Assessment Form](#)

[Notice of Placement in Secure Juvenile Facility Form](#)

### 11.10 Victim-Witness Program.

The Victim-Witness Assistance chapter of the Special Agents Field Manual ([Chapter 53](#)) discusses individual aspects of the program, such as:



- General
- Identification of Victims
- Description of Services
- Protection from Harassment/Intimidation
- Other Responsibilities
- Guidelines for Special Victim Populations
- Child Abuse Reporting
- Victim Privacy
- Post-Conviction Services (Victim-Witness Notification Program)
- Coordination
- Training
- Files/Forms
- Reporting Requirements

#### 11.11 Special Interest Cases.

(a) General. Special interest cases involve aliens or issues of particular concern to the Service, particularly at the Headquarters level. The aliens background often occasions this special interest, especially when that background may include criminal or terrorist activity. When another law enforcement or government agency contacts the Service about investigating an individual, that case will likewise become a special interest case. Among other things, high profile/media attention; sensitive circumstances surrounding the case; international relations; national security; public policy; or community safety may render a case of special interest.

#### (b) Categories of Special Interest Cases.

Human rights abuses (war crimes, genocide, torture or persecution of others);

Terrorist-related (suspected involvement in or support of terrorist organizations);

National security (espionage, weapons of mass destruction, acting on behalf of a hostile foreign intelligence service, violation of import-export laws relating to sensitive information or technology, etc.).

For special interest case standard operating procedures, see the Designation of National Security Matters memorandum dated December 18, 2002 ([Appendix 11-5](#), below). Note: The memorandum is designated as limited official use/law enforcement sensitive.

#### 11.12 National Security Entry Exit Registration System (NSEERS).

The NSEERS system has replaced the special interest alien procedures applicable to certain non-immigrants. The NSEERS requirements apply to certain classes of non-immigrant aliens from countries designated by the Attorney General and to others whose presence in the United States requires close monitoring (see [8 CFR 264.1\(f\)](#) and Standard

Operating Procedures for Aliens Subject to Special Registration in Appendix 15-9 of the Inspectors Field Manual).

### 11.13 Preparing for a Removal Hearing.

You may find yourself processing an alien for a removal hearing under varied circumstances, e.g., at an IRP location; at your office, correcting paperwork; after an arrest incidental to a fugitive/absconder operation, and so forth. For procedures, see the Special Agents Field Manual, Chapter 14: Alien Processing, Removal Hearings, Voluntary Departure; Institutional Removal Program Procedures (section 11.8, above); and the special instructions itemized in Interim Enforcement Procedures (IIRIRA), Chapter V, section D, paying particular attention to item #8, which concerns aliens with U.S. military service (Appendix 11-6).

After establishing alienage, you will have to complete the forms included in the following chart to initiate removal proceedings:

A file Left Side

I-862 Notice to Appear

I-200 Warrant of Arrest

I-286 Notice of Custody Determination

A file Right Side

I-213 Record of Deportable Alien

I-94

I-826 Notice of Rights

I-214 Sworn Statement (depending on case)

I-265 Notice to Appear, Bond and Custody Processing Sheet

I-217 Info for Travel Document or Passport (depending on nationality)

I-770 Used for juveniles Statement/Q&A (depending on case)

List of legal services

Record checks (i.e. CIS, NIIS, CLAIMS, DACS, NCIC)

IDENT printouts

FD-249 fingerprint card

Conviction documents

R-84 Green fingerprint card

#### 11.14 Record of Expenses Billable to Transportation Company (Form I-380).

Prepare Form I-380 when an alien's removal will be at the transportation company's expense. Keep the I-380 with the original Warrant of Removal (I-205). Enter individual expenses as they accrue. If the alien transfers to another facility, the I-380 will travel with him/her, along with the Warrant of Removal. Each office incurring billable expenses will add those items to the form. When the executed Warrant of Removal, accompanied by the I-380, returns to the originating office, the I-380 serves as the basis for the bill. (For carrier liability and notification, see Chapter 16.7, below.)

Note: You must initial every item you enter on Form I-380.

#### 11.15 Mentally Disturbed Aliens.

(a) Medical Grounds of Inadmissibility. Section 212(a)(1)(A)(iii) of the Act governs an alien's inadmissibility on medical grounds; see AFM 23.3(3).

(b) Mentally Disturbed Aliens Requiring Escort. For escort policies and procedures of mentally disturbed aliens, see Chapter 16.4(a)(1) of this manual. Additional information is also available from the U.S. Public Health Services Division of Immigration Health Services; see <http://www.inshealth.org/>

(c) Special Needs in a Detention Facility. When attending to an alien diagnosed with a medical or psychiatric condition, you must address the special needs or requirements sent by the medical care provider to the Officer in Charge of the detention facility. (See the detention standards on medical care and administrative segregation, respectively at Chapters 24.2 and 25.11, below.)

#### 11.16 Stipulated Orders of Removal.

(a) Overview. A stipulated order of removal is an agreement between the Service and the alien in which the alien consents to being deported/removed. Such an agreement is advantageous to the government in that it relieves the Immigration Court of the need to have a hearing, saves the Service additional detention costs and allows the alien to return to his/her country without further detention. An immigration judge may enter an order of deportation, exclusion or removal, stipulated to by the alien (or the alien's representative) and the government. (See Section 240(d) of the Act and 8 CFR 3.25(b).)

It is important to note that some Immigration Courts will not allow for stipulated removal requests so a hearing will have to be scheduled. You must inquire as to whether the

Immigration Courts in your area allow Stipulated Orders of Removal, prior to offering it to an alien.

(b) Procedure.

(1) Notice to Appear (I-862). The alien shall be served with a charging document, the Notice to Appear I-862, which lists the allegations and Immigration violations. Most times the charging document will already have been served to the alien by another program, such as Border Patrol, Inspections or Investigations. At this time you may explain the stipulated request process and then ask the alien if they would like to request a stipulated removal.

(2) Preparation of a Stipulated Request. Prior to drafting a stipulated request for removal and hearing waiver, confirm that the alien agrees to each of the following provisions:

Admits the truth of the allegations contained in the charging document;

Concedes deportability or inadmissibility, as charged;

Declines the opportunity to apply for relief;

Designates a country for deportation or removal;

Concedes to the introduction of the written stipulation as an exhibit to the Record of Proceeding (documents filed with the court);

Understands and accepts the consequences of the stipulated request, into which he/she is entering and provides a statement to this effect, and;

Agrees to accept a written order of deportation, exclusion or removal as final, and so waives the right to appeal.

Although there is no standard form for stipulated removals, the alien must agree to the above mentioned provisions. See a sample of a stipulated removal in Appendix 11-7 of this manual. Generally speaking, the Office of District Counsel will prepare the stipulation for filing with the Executive Office of Immigration Review.

(c) Required Signatures. The stipulated request and required waivers shall be signed on behalf of the government by District Counsel and by the alien and his/her attorney or representative, if any.

(d) Review by Immigration Judge. The immigration judge will review the charging document, the written stipulation and supporting documents to verify the aliens waiver is made freely and knowingly.

(e) The Stipulated Order. A signed order legally warrants the aliens deportation or removal from the United States.

(f) Removal and Closure. The alien will be removed to the country designated on the stipulated request or to the country prescribed in section 241 (b)(2) of the Act. Update the closure (CLOS) screen in DACS to show the alien was removed. Enter 6 in the Depart-Cleared Stat data field.

#### 11.17 Inadmissible Arriving Aliens.

According to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, Sep. 30, 1996, 110 Stat. 3009, applicants for admission to the United States fall into one of the following three groups: (i) aliens arriving in the United States, (ii) aliens interdicted at sea and brought to the United States, and (iii) aliens that are present in the United States without being admitted.

Admission or admitted is defined as the lawful entry of an alien into the United States after inspection and authorization by an immigration officer (see Section 101(a)(13)(A) of the Act).

To determine whether an arriving alien belongs to one of the 10 classes of aliens inadmissible to the United States, see section 212 of the INA.

Aliens arriving in the United States to present themselves for admission, who have not yet been admitted, are discussed below.

(a) Expedited Removals. Inadmissible arriving aliens may be served a Form I-860, Notice and Order of Expedited Removal. This applies only to aliens inadmissible under INA 212(a)(6)(C) and 212(a)(7). Aliens inadmissible on any other grounds are not subject to expedited removal proceedings. Pursuant to INA 235(b)(1)(F) and 8 CFR 235.3(b)1(i), Cubans are not subject to expedited removal. An Immigration Inspector who has encountered the alien applying for admission serves the I-860. The I-860 informs the alien that he/she is inadmissible to the United States and orders the alien removed. Generally, all aliens subject to expedited removal will be detained. Aliens who are served with an I-860 and who claim of fear of return to their native country are given a credible fear review by an asylum officer. See 8 CFR 208.30, 235.3. If the alien claims fear of return, he/she will be detained until an asylum officer can interview him/her.

(b) Notice to Appear. Inadmissible arriving aliens processed for removal proceedings under INA 240 will be served with a Form I-862, Notice to Appear. The I-862 informs the alien that he/she is an arriving alien and advises of the allegations of inadmissibility. Inadmissible arriving aliens may be detained to await their hearing before an immigration judge. They may also be paroled into the United States. The parole may be accompanied by the posting of a bond. Bonds for arriving aliens who are paroled may only be set by the District Director. For procedures involving the parole of aliens from Service custody, see 11.1(c) in this chapter.

(c) Inadmissible Arriving Aliens Ordered Removed. Having been ordered removed by an Immigration Officer through the Expedited Removal process, the alien is barred from re-entering the United States for 5 years. When the alien is removed, he/she is served with Form I-296, Notice to Alien Ordered Removed/Departure Verification. The I-296 contains the warnings of the I-294, therefore a separate I-294 is not executed. Normally, aliens ordered removed through the Expedited Removal process are returned to their country the same day they were apprehended (if they are a citizen of contiguous territory). Aliens from countries that are not contiguous territory may be detained until a travel document can be obtained.

In contrast, removals of inadmissible aliens present in the United States without being admitted or paroled are executed on Form I-205, Warrant of Removal/Deportation. In addition to the I-205, the alien must be served with a Form I-294, Warning to Alien Ordered Removed or Deported. The I-294 specifies how long the alien must wait before applying for entry to the United States again. The prohibitions to re-entry are as follows:

A period of 5 years from the date of departure from the United States as a consequence of having been found inadmissible as an arriving alien in proceedings under section 235(b)(1) or section 240 of the Act initiated upon the aliens arrival to the United States (20 years in the case of a second or subsequent removal or at any time if the alien has been convicted of an aggravated felony) INA 212(a)(9)(A)(i);

A period of 10 years from the date of departure from the United States for all other aliens not described in INA 212(a)(9)(A)(i) (20 years in the case of a second or subsequent removal or at any time if the alien has been convicted of an aggravated felony) INA 212(a)(9)(A)(ii).

(d) Docket Control of Inadmissible Arriving Aliens. Appendix B of the DACS Users Manual provides the codes to use when entering, updating and closing out expedited removals and other inadmissible arriving aliens.

#### 11.18 Temporary Residents.

The Immigration Reform And Control Act of 1986 (IRCA), Pub. L. 99-603, created sections 210 and 245A of the Act, allowing certain aliens to apply to be admitted for lawful temporary and permanent residence. Both sections provide that aliens who were admitted as lawful temporary residents could later be apply to adjust status to that of lawful permanent resident. This section will discuss both sections and how they apply to the Detention and Removal program.

(a) Section 210 of the INA (Special Agricultural Workers). Aliens eligible for SAW benefits were divided into two groups. Group 1 included aliens who could prove that they resided in the United States and performed at least 90 days of agricultural work during the years of 1984, 1985 and 1986. Group 2 were only required to prove they resided in the United States and performed at least 90 days of agricultural work between May 1, 1985 and May 1, 1986. Aliens also must have been able to establish that they were

admissible. Eligible aliens must have applied for temporary residency during the 18-month period between June 1, 1987 and November 30, 1988. Aliens granted temporary residency under section 210 were eventually granted lawful permanent residence. Pursuant to 8 CFR 210.4(d), SAW status is automatically terminated if an immigration judge issues a final order deportation or removal. Officers who encounter aliens claiming to have a SAW benefit pending should check all applicable computer systems to ensure the case is still pending. Aliens with a final order of deportation or removal whose SAW application has been denied should be removed. If questions arise involving aliens with pending SAW applications, consult with the Examinations Branch and the Office of the District Counsel.

(b) Section 245A of the INA (Amnesty) Aliens who entered the United States before January 1, 1982, and maintained a continuous unlawful presence from November 6, 1986, until the day they filed their application were eligible to apply for 245A benefits. Originally, applications for 245A benefits must have been filed between May 5, 1987 and May 4, 1988. After the May 4, 1988, deadline, 3 separate class action lawsuits were filed against the Service to extend the application deadline. Section 1505(c) of the Legal Immigration Family Equity Act Amendments (Pub. L. 106-554) (LIFE Act Amendments) was passed to address the concerns of all three lawsuits. Additional information on the LIFE act can be found in 8 CFR 245a.10, 8 CFR 245a.11, 8 CFR 245a.12 and 8 CFR 245a.13. Officers who encounter aliens claiming to have a 245A benefit pending should check all applicable computer systems to ensure the case is still pending. Aliens with pending applications cannot be removed from the United States. Aliens with a final order of deportation or removal whose 245A application has been denied should be removed. Section 245A of the INA and 8 CFR Part 245a are quite extensive. If you are in doubt of what action to take with a 245A applicant, consult your Examinations Branch or the Office of the District Counsel.

#### 11.19 Refugees, Asylum and Withholding of Removal.

(a) Definition. Eligibility to apply for asylum in the United States is specifically described in section Sec. 208(a) of the Act. Generally, any alien who is physically present in the United States, including an arriving alien, may apply for asylum. To be granted asylum, the alien must be a refugee as defined in section 101(a)(42)(A) of the Act. The basic requirements of this definition are that the alien be unwilling or unable to return to his/her country of nationality or habitual residence due to a well-founded fear of persecution. The persecution described must be on account of the aliens race, religion, nationality, membership in a particular social group, or political opinion. The statute specifically states that forced compliance with, or resistance to, coercive population control is deemed to constitute persecution based on political opinion.

(b) Indication of Fear of Persecution or Request for Asylum. An alien is not specifically required to state that he wishes to apply for asylum. Any time an immigration officer becomes aware that an alien fears harm if returned to his/her country, the officer must take certain steps on that aliens case prior to removal from the United States. It should particularly be noted that only an asylum officer, immigration judge or the BIA has

authority to determine ineligibility for asylum based on failure to apply within one-year of arrival or based on the existence of a prior denial of an asylum request, see 8 CFR 208.4(a)(1).

(c) Jurisdiction. What to do when an alien expresses a fear of harm or torture depends upon the type and status of proceedings in which the alien has been placed (8 CFR 208.2). The Asylum Division has jurisdiction over requests for asylum from aliens seeking admission at ports of entry. This includes initial jurisdiction over aliens placed in expedited removal proceedings who claim to have a credible fear of persecution (8 CFR 208.30). See (b)(2)High

The Asylum Division also has jurisdiction to make a reasonable-fear determination when an alien placed in administrative removal proceedings (relating to non-permanent-resident aliens convicted of an aggravated felony) expresses a fear of returning to the country of removal. In addition, the Asylum Division has jurisdiction to make a reasonable-fear determination when an alien whose previous removal order has been reinstated expresses a fear of returning to the country of removal (8 CFR 208.31). This is the mechanism by which aliens who do not go before an immigration judge in removal proceedings may assert a claim under the Convention Against Torture (8 CFR 208.16-18).

(d) Disclosure. Information concerning any asylum application, request for a credible fear determination, or request for a reasonable fear determination may not be disclosed to any third party except as specifically authorized under 8 CFR 208.6.

(e) Violation of Status. An alien who has been granted asylum may not be deported or removed unless his/her asylum status is terminated pursuant to 8 CFR 208.24. An alien in exclusion, deportation, or removal proceedings who is granted withholding of removal or deportation, or deferral of removal, may not be deported or removed to the country to which his/her deportation or removal is ordered withheld or deferred except in accordance with 8 CFR 208.24 or 208.17(d) or (e).

If an alien who was admitted to the United States as a refugee under Section 207 of the INA is subsequently determined not to have been a refugee at the time of admission (see section 101(a)(42) of the Act), he/she must be notified, in writing, of the intent to terminate refugee status. The alien then has 30 days during which to present evidence supporting the refugee status as granted; no other appeal is allowed. If refugee status is termination, place the alien under removal proceedings as an inadmissible alien, serving a Notice to Appear (see 8 CFR 207.9). For a sample of charging document wording, see the Special Agents Field Manual (Appendix 14-1).

For a recent discussion on processing refugees conditionally admitted under INA 207 and subsequently found inadmissible, in General Counsel memorandum, Removal of Persons Admitted as Refugees Pursuant to Section 207, November 2001. The refugee status of an alien properly admitted under 207, but who subsequently becomes inadmissible by virtue of a criminal offense or conviction, cannot be terminated (8 CFR 207.9). Rather, such an



alien is required to apply to the Service one year after entry, by submission of Form I-485, for a determination of admissibility and eligibility to adjust to permanent residence status. If the alien does not voluntarily apply for adjustment of status subsequent to the one-year anniversary of admission as a refugee, he/she may at any time be taken into custody for inspection and examination under oath to determine admissibility. If found inadmissible, and therefore not eligible to adjust status to that of lawful permanent resident under section 209(a) of the Act, the alien must be placed in removal proceedings through issuance of a Notice to Appear (I-862). (For waivers of inadmissibility, see INA 209(c); see also, Matter of Jean, 23 I. & N. Dec. 373 (A.G. 2002)). There is no apparent time limit on the authority of the Service to take such an alien into custody following expiration of the one-year period after admission as a refugee. See sample charging document language in Appendix 14-1 of the Special Agents Field Manual.

#### 11.20 Applicants for Adjustment of Status.

When you determine an alien is eligible to receive a benefit under section 245 of the Act, it is important to be familiar with specific conditions, restrictions, procedures and the types of adjustment of status. Understand the restrictions and eligibility for these certain benefits and determine if removal proceedings should commence, or be deferred to allow the alien to pursue a benefit under the Act. For information on adjustment of status, see Chapter 23 of the Adjudicators Field Manual. If you have questions concerning an aliens eligibility, consult with the Examinations Branch or the Office of the District Counsel.

(a) Removal Proceedings. The application for adjustment of status filed by any alien in removal proceedings, except an arriving alien, will be reviewed by an immigration judge (see 8 CFR 245.2(a)(1)). For information on relief and waivers from removal, see Restoration or Adjustment of Status and Waivers, Chapter 20.5, below.

(b) Applications Pending prior to Removal Proceedings. You must check the Computer Linked Application Information Management System (CLAIMS) to determine whether the alien has filed any applications (see Chapter 36.5 of this manual). If an application for adjustment of status is pending, immediately notify the office having jurisdiction over the application that removal proceedings have been initiated. Request the aliens file from that office and review upon receipt. If you have legal questions concerning the application, consult with the Office of the District Counsel.

(c) Adjustment of Status Granted by the Immigration Judge. See Chapter 20.5(a), below.

(d) Rescission of Adjustment of Status. See Chapter 26 of the Adjudicators Field Manual; see also 8 CFR 246.1.

#### 11.21 Applicants for Naturalization.

(a) General. For the regulations governing naturalization, see 8 CFR parts 310-338.

(b) Revocation of Citizenship. If you encounter an alien whose recent naturalization appears fraudulent, you must notify the Examinations Branch and Investigations immediately. Revocation of naturalization can only be accomplished judicially. The Adjudicators Field Manual, Chapter 76, explains the process of denaturalization and loss of citizenship and, in Appendix 73-4, the citizenship-revocation process, as does Chapter 22, De-naturalization Investigations, of the Special Agents Field Manual.

(c) Claims of Naturalization. If you doubt an aliens claim to be a naturalized citizen of the United States, check the Central Index System or the Computer Linked Application Information Management System. If you are unable to verify the claim yourself, you should consult with the Examinations Branch and the Office of the District Counsel.

11.22 Intra-Departmental Cooperation. [Reserved]

## **Chapter 12: Removal Process: Immigration Bond Management**

12.1 Introduction to Bonds

12.2 Categories of Bonds

12.3 Bond-Posting Procedures

12.4 Bond Processes

12.5 Amwest Settlement Agreement

12.6 Surrender Rule [Reserved]

12.7 Demands on Bonds

12.8 Substantial Performance; Substantial Violation

12.9 Procedures for Breaching Bonds

12.10 Breached Bond Appeals

12.11 Canceling Bonds

12.12 Information Management Systems for Bonds

References:

INA: 213, 236, 239, 240; 240B

Regulations: 8 CFR 103.3-103.6, 213.1, 240.25, 241.1-241.5, 241.13-241.14, 299.1, 1240.26

Other: Treasurys Listing of Approved Sureties (Department Circular 570); INS Bonds Field Financial Procedures; Bond Management Information Systems: Instructions for Field Users with View-Only Access; DACS Users Manual

## 12.1 Introduction to Bonds.

A bond is a legally binding contract between the U.S. Government (the obligee) and an individual or company (the obligor) in which the obligor commits a certain sum of money to guarantee an aliens compliance with the bond conditions. If the specified conditions are fully met, the bond is canceled and any securities or monies deposited are returned, with interest, to the obligor. If no securities have been exchanged, as is the case with surety bonds, then the surety company is released from its obligation to the Government. If the conditions are not fulfilled, the bond is breached and the financial deposit forfeited or the liquidated damages recovered by the government.

The bonds posted with Detention and Removal Operations (DRO) and discussed in this chapter are, specifically, immigration bonds. Although appearance bonds comprise the largest group in both numbers and dollars, immigration bonds serve other purposes, also, e.g., setting conditions on an aliens release, enforcing an aliens timely departure, ensuring an alien maintains valid immigration status and does not violate the conditions under which he/she entered the United States, etc. You must be conversant with the various types of immigration bonds and the role that each plays in the U.S. Department of Homeland Security's (DHS) ability to uphold the immigration and nationality laws of the United States.

## 12.2 Categories of Bonds.

Immigration bonds fall into the following categories: appearance bonds, performance bonds, voluntary departure bonds, and other. The form used to execute immigration bond contracts of all types is the I-352, Immigration Bond.

(a) Appearance Bonds. This type of bond releases an alien from custody, guaranteeing his/her presence when required during immigration proceedings, whether for interviews, status checks, court hearings, or removal. Failure to comply with any specified condition constitutes a bond violation, breaching the bond and rendering it immediately due and payable. This category includes the following:

Delivery Bonds posted for aliens in deportation or removal proceedings; violated when the obligor fails to deliver (cause the bonded alien to appear) as agreed until such time as the alien dies, proceedings are terminated, the bond is canceled, or the U.S. Immigration and Customs Enforcement (ICE) accepts the alien into custody for detention or removal.

Inadmissibility Bonds posted to parole certain inadmissible arriving aliens; previously called exclusion bonds.

Order of Supervision Bonds may be required for aliens whom the ICE is unable to remove within 90 days from the final order of removal/deportation. The obligor guarantees the aliens compliance with all requirements (cooperating with efforts to obtain travel documents, surrendering for removal, etc.). Given the number of conditions that may be attached to bonds of this type, you must exercise judgment in deciding whether the violation of a particular condition constitutes a breach. As a general rule, if you find substantial performance (compliance with the terms of the order of supervision), you should let the bond stand.

(b) Performance Bonds. Bonds of this type oblige the alien to meet the standard conditions imposed by his/her immigration status (e.g., a B-2 visa holder cannot work in the United States) or case-specific requirements. In many offices, the Inspections Branch or Adjudications Branch manages performance bonds which include:

Public Charge Bonds posted to ensure an aliens ability to support him/herself without depending on public assistance from any federal, state, or local agency. With enforceable affidavits of support required for family-based immigration since December 1997, the need for public charge bonds has declined. For clarification of the public benefits excluded from public charge determinations, see INS Field Guidance on Deportability and Inadmissibility on Public Charge Grounds dating from May 1999 (<http://www.acf.dhhs.gov/programs/ofa/fieldgui.htm>).

Maintenance of Status and Departure Bonds can be required by a consulate before issuing a nonimmigrant visa, by Inspections prior to admission, by an immigration judge (IJ) prior to admission, or by an adjudicator before granting an extension of stay or change of status; rarely used.

(c) Voluntary Departure Bonds. As the name suggests, these bonds commit the alien to arrange, finance, and effect his/her departure from the United States by a specified date, in accordance with the conditions specified in the voluntary departure order.

The mandatory minimum amount for a voluntary departure bond is \$500. Failure to post bond within five business days of the immigration judges order automatically vacates the voluntary departure order, activating the alternate order of removal.

For a comprehensive discussion of policies and procedures, see Voluntary Departure (Chapter 13, below).

### 12.3 Bond-Posting Procedures.

(a) Cash v. Surety Bonds. Any person (including the arrested alien, corporation, or surety company) may post an immigration bond. Individuals and corporations post cash bonds. Surety insurance companies (and their agents) post surety bonds.

Cash Bonds—The individual or corporation must post the full amount of the bond in cash or cash equivalent, in the form of cash (U.S. dollars only); cashiers check; certified check; or money order. Checks must be made payable to the U.S. Department of Homeland Security. DRO prefers money orders and cashiers checks, which reduce paperwork and are more easily safeguarded than other forms of payment.

Surety Bonds—The surety agent must provide a power of attorney (the legal instrument authorizing the agent to execute the immigration bond on the surety company's behalf, and to obligate money equal to at least the amount of the bond.) If the power of attorney specifies a monetary limit, e.g. \$5,000, the agent can post bond up to the specified amount only. The agent may not combine two or more powers of attorney to post a bond. No cash, check, or other collateral is required at the time the bond is posted.

The power of attorney must specifically authorize the posting of an immigration bond, otherwise the surety company may dispute the agent's authority to act on its behalf.

Treasury Department Circular 570 lists all surety companies approved to post bonds with the U.S. Government. Copies are available in all ICE offices and on the Internet, at <http://www.fms.treas.gov/c570/c570.html#certified>. The website tracks changes to the list issued on July 1<sup>st</sup> of each year (<http://www.fms.treas.gov/c570/supplements.html>).

(b) Bond Posting Worksheet Instructions.

(1) Cash Bonds. Before accepting a cash bond on behalf of DRO, you must do all of the following:

Have the obligor complete the Bond Worksheet, to provide relevant information about the obligor and the alien to be bonded; see the sample worksheet provided in Appendix 12-1.

Request identification from the obligor. The obligor may present any government-issued photo identification including, but not limited to, passport, military ID, resident-alien card, driver's license. Be sensitive to the fact that the obligor may be a U.S. citizen. You must accept any authorized photo identification presented by the obligor; you may not insist on a passport. If you question the authenticity of the photo-ID presented by the obligor, consult your supervisor. Note: DRO officers do, but Bond Control Specialists and Detention and Deportation Assistants do not, have the legal authority to question or determine alienage.

Make and file a copy of the ID provided by the obligor.

Review the alien's A-File to verify custody status and eligibility for release on bond. If another law enforcement agency (federal, state, or local) has physical custody of the alien and jurisdiction over the case, DRO has no authority to accept a bond on his/her behalf.

Verify the bond amount.

When you have completed the above verifications, you may ask a Detention and Deportation Assistant to prepare the bond forms, although you must review the forms for completeness and accuracy.

#### 12.4 Bond Processes.

(a) Bond Amount. See Special Agents Field Manual, Chapter 14.3, Detention and Bond Determinations.

(b) Bond Redetermination.

At any time during removal proceedings:

The alien may request a custody redetermination from the IJ or the officer in charge. If dissatisfied, he/she may repeat the request in another forum. The alien dissatisfied with the officer in charge's decision may turn to the immigration court. Dissatisfied with the immigration judge's decision, the alien may file an appeal with the Board of Immigration Appeals (BIA).

ICE, through the Principal Legal Advisor, may appeal the immigration judge's custody decision to the BIA.

Within seven days of release from ICE custody, the alien may request a review of the release conditions from the immigration judge. After the seventh day, however, he/she must direct any such request to the officer in charge.

(c) Release Pending Bond Redetermination. Although redetermination hearings take place quite promptly, some aliens/obligors prefer not to wait. In such cases, release the alien only if bond is posted in the full amount (the amount at issue).

Resist pressure to accept a bond when the redetermination hearing is imminent.

(d) Processing a Bond after Redetermination.

Cancel, if it is a surety bond. The surety company will post a new bond in the revised amount, along with a new power of attorney.

If processing a cash bond, see Bonds Field Financial Procedures, sections 8 and 9

(b)(2)High

Record any redetermination of the bond amount in DACS. Enter the date (BOND-RED-DATE) and the new amount set by the officer in charge, IJ, or BIA.

(e) Voluntary Departure Bonds. If the immigration judge granting voluntary departure requires the posting of a voluntary departure bond, the alien must post the bond within five business days of the IJ's order. This requirement is absolute, whether or not the alien

plans to appeal. If the alien does not post bond but files an appeal, he/she will be appealing a removal order, not a grant of voluntary departure, because of his/her failure to comply with the IJs order. You must immediately notify the Office of the Principal Legal Advisor of the aliens noncompliance, to ensure counsel can so-inform the BIA while the appeal is pending.

An alien granted voluntary departure by the BIA must post a voluntary departure bond within five business days of the BIAs order. If the alien fails to post the bond, the alternate order of removal takes effect.

See also Chapter 13, Voluntary Departure.

(f) Revocation of Bond. The officer in charge may, for cause, revoke an aliens release. (For procedures on serving the obligor with the demand to return the alien to ICE custody, see Demands on Bonds 12.7, below).

Use Form I-286, Notice of Custody Determination, to advise the alien of the new custody conditions and the right to appeal.

(g) Placing a Detainer on a Bonded Alien. [Reserved]

(h) Miscellaneous Aspects of Managing Dockets under Bonds. The BOND POSTED stamp on the file folder flags the case as one with an active bond, both as a reminder to monitor the bond at each stage of the removal process and to prevent the file from being prematurely retired to the Federal Record Center or National Records Center. (When the case is closed, indicate the final disposition of the bond on the front of the file. Position the breached or canceled stamp and the date stamp over the BOND POSTED stamp, to obscure the original bond stamp.)

(1) Assigning Call-Up Dates: Maintain control of your bond docket by calling-up and reviewing the files on a regular basis. Call-up dates are the key to successful management, signaling when you will next review the case to check on its status (at a minimum, every six months) and take any action required.

Give your delivery and exclusion bonds call-up dates that allow you to review each case for appropriate action within a few days of an order, a hearing, an appeal, a stay, or a grant of relief. The most appropriate call-up will depend upon a combination of factors: the case category, individual circumstances, etc.

Assign call-up dates for voluntary departure files based on the date the voluntary departure status expires. (If efforts to contact the alien and obligor fail, check all DHS record systems [e.g., CIS, NIIS, NAILS] for a recent change in immigration status before breaching the bond.)

(2) Commenting in DACS: Use the Case Comments screen (CCOM) in DACS to record information not captured on the Bond Summary (BOND) screen. The BOND screen limits entries to preset data fields; it has no other section for notes.

(3) Transferring Files: When a bonded alien is granted a change of venue, transfer the bond and administrative file to the new docket control office (DCO) and, on the Close screen (CLOS), type the location code for that DCO (TRANSFER-TO-DCO). You will then complete Form I-350, forwarding a copy to the DMC.

(4) Processing Bond-Ownership Transfers. To transfer ownership of a bond, the obligor must complete Form I-312, Designation of Attorney in Fact. If you or the obligor has questions about the I-312, contact the Bond Branch at the Debt Management Center (b)(2)High. When the obligor submits the form, check for completeness and accuracy, place a copy in the file. Forward the original to the DMC.

For guidance on issues not covered here, see Bonds Field Financial Procedures (b)(2)High. See Also the online "Ask the Professor" feature to electronically: (b)(2)High

12.5 Amwest Settlement Agreement. [Reserved]

12.6 Surrender Rule [Reserved].

12.7 Demands on Bonds.

(a) General. With the single exception noted here, you must serve the obligor with Form I-340, Notice to Obligor to Deliver Alien, every time you issue a demand for the bonded aliens presence. If you do not follow this standard procedure, specifying the reason for the demand (removal, interview, or hearing); delivery conditions, etc., the obligor is not obliged to respond.

The exception arises when the public interest dictates taking an alien into custody without warning (e.g., when the aliens record indicates a significant flight risk).

(b) Notification to Obligor (Cash or Surety). Use certified mail, return receipt requested, or personal service to present the obligor with the I-340.

(c) Notice to Surety Through Agent. Send notices, demands, etc., to the agent at the address of record in the bond contract, with copies to the surety company. If the bond does not provide the suretys address, you have the option of forwarding the suretys copies to the companys headquarters. Contact the agent via certified mail; use general delivery to send the suretys copies.

A surety switching locations must send DRO separate change-of-address notices for each outstanding bond bearing the outdated address.



(d) New or Amended Charging Document to Surety. You must send a copy of a new or amended Notice to Appear (I-862) to the obligor of a surety bond. Failure to do so gives the obligor grounds for challenging a bond breach based on that demand. You need not give the obligor notice of any other actions concerning the bonded alien in immigration proceedings.

(e) Surrender Location. Select a surrender location in ICE's area of responsibility where proceedings are pending or, if the proceedings have concluded, where the immigration court issued the final order of removal.

An obligor interested in surrendering an alien before the specified date must, at least 72 hours in advance of the proposed surrender, submit a written request to the officer in charge with jurisdiction, requesting ICE's revocation of the bond and acceptance of the alien into custody.

#### 12.8. Substantial Performance; Substantial Violation.

To promote compliance and prevent careless but consequential mistakes, take the time to explain substantial performance/compliance and substantial violation to both obligor and alien before releasing the alien into the obligors custody. Spell out the responsibilities of bonded alien and obligor; if necessary, go over the technical language in the bond contract.

Compliance with the conditions specified on the bond, allowing for minor or technical exceptions, will satisfy the requirement for substantial performance. The burden of proof of substantial performance rests with the obligor. A finding of substantial performance releases the obligor from liability (8 CFR 103.6(c)(3)).

Not every violation rises to the level of a substantial violation. Nor does substantial performance mean full performance or perfect compliance.

For example, an obligor may make an honest effort at complying with a demand, but be unable to, delivering an alien a few days late. This would not be "full performance" but would be "substantial performance". At the same time, delivering the alien a few days late is a violation of the conditions of the bond, but not a "substantial" violation. In this scenario, the substantial performance warrants cancellation of the bond; the non-substantial violation does not warrant a breach.

As a rule, an obligors failure to deliver an alien within 30 days of the required delivery date constitutes a "substantial" violation. Consequently, there can be no finding of substantial performance. The bond has been breached.

#### 12.9 Procedures for Breaching Bonds.

(a) Breach Events substantial violation of the bond conditions. A likely example of a breach event would be an obligors failure to produce the bonded alien on the date

specified on the I-340, Notice to Obligor to Deliver Alien. Surrender of the alien after that date does not relieve the obligor of the bond obligation.

At some point before the surrender date, however, the obligor may seek a continuance (up to five days). Record, date, and initial any extension you grant on both the obligors copy and the file copy of the I-340.

Use Form I-323, NoticeImmigration Bond Breached, to inform the obligor of ICEs intent to breach the bond, the reason for the breach, and the obligors right to appeal. Enclose Form I-290B, Notice of Appeal to the Administrative Appeals Office, with the I-323.

A voluntary departure bond is breached when the alien fails to depart on or before the date specified.

On the (b)(2)High screen in DACS, enter the date of the breach (b)(2)High the breached status (b)(2)High and the date you sent the I-323 to the Debt Management Center (b)(2)High.

For detailed procedures for breaching cash and surety bonds, see Bonds Field Financial Procedures, sections 5 and 6 (b)(2)High

#### (b) Mitigation.

Mitigation refers to the reduction of monetary damages owed the government after a bond is breached. The DHS settles for damages amounting to less than the face value of the bond, in accordance with the conditions stated on the I-352.

If an obligor delivers an alien to ICE within 30 calendar days of the date of issuance of the I-323, mitigation of the amount of monetary damages is mandatory. The mitigation provisions appear in the body of the bond form itself (see I-352, page 4).

An obligor with an appeal pending with the AAO cannot seek mitigation without withdrawing the appeal.

#### 12.10 Breached Bond Appeals.

(a) General. With certain exceptions, the Administrative Appeals Office (AAO), with jurisdiction over more than 66 kinds of petitions and applications, adjudicates cases involving immigration bond breaches.

(b) Filing an AAO Appeal. The obligor has 30 days from the date of issuance (33 days if the notice was mailed) during which to submit the I-290B, Notice of Appeal, to the ICE field office that issued the breach. If the last day to file falls on a Saturday, Sunday, or legal holiday, the filing period extends to the next business day.

The obligor may submit a brief, statement, or other supporting material with the I-290B or, within 30 days of the date on the I-290B, directly to the AAO.

Stamp the I-290B with the time and date of receipt. On the I-323, record that an appeal was filed and the date; forward a copy to the DMC.

(c) Improperly Filed Appeals. Appeals automatically rejected because of irregularities include those filed:

Untimely (see 8 CFR 103.3(a)(2)(v)(B)(1));

With insufficient funds or invalid means of paying filing fees (e.g., bounced check or other financial instrument returned as non-payable);

By any person or entity other than the obligor, the obligors attorney of record, or the surety agent.

A breach not appealed during the filing period is rendered administratively final. An appeal received after the deadline is ineligible for AAO review but may, if it meets the requirements, be processed as a motion to reopen (see 8 CFR 103.5(a)(2)) or reconsider (see 8 CFR 103.5(a)(3)).

Note: If an obligor who has submitted a mitigation request later files an appeal based on the same breach event, the AAO will not consider the appeal. In such a case, forward the appeal directly to the officer in charge adjudicating the mitigation request.

(d) Extension of Deadline for Filing Brief. If the AAO grants an obligors written request for more time to prepare a brief, the obligor must submit the brief directly to the AAO.

(d) Processing the Appeal. Upon receipt of an appeal, review the case in its entirety to determine whether arguments presented on appeal overcome the basis of the breach. If the grounds of the appeal seem prima facie valid, the officer in charge may treat the appeal as a motion to reopen or reconsider. If, after reviewing the case, the officer in charge finds the breach justified, you must promptly prepare a Record of Proceeding (ROP) and forward the appeal to the AAO.

(e) Officer-Initiated Reconsideration. You may receive information that, if obtained earlier, would have resulted in some outcome other than the bonds being breached (e.g., alien was incarcerated or had already departed in accordance with a grant of voluntary departure). In those cases, the officer in charge has the discretionary authority to rescind the breach and cancel or reinstate the bond (see 8 CFR 103.5(a)(5)(i)).

(f) Creating the Record of Proceeding. Keep these records in reverse-chronological order, from the earliest (at the bottom of the file) to the latest (placed on top). Exception: upon

receipt of a brief filed in support of the I-290B, insert it immediately below the I-290B, irrespective of filing date.

The Record of Proceeding (administrative record) will contain copies of the following documents:

Form G-28, Notice of Entry of Appearance as Attorney or Representative;

Form I-290B, Notice of Appeal to the Administrative Appeals Office, plus briefs or attachments;

Form I-323, Notice Immigration Bond Breached;

Form I-166, Notice to Surrender for Deportation;

Form I-340, Notice to Obligor to Deliver Alien;

U.S. Postal Service Form PS 3811, Return Receipt (proof of delivery of the I-340);

Bond Questionnaire and worksheet (surety bond);

Power of attorney (surety bond) or

Form I-305, Receipt of Immigration Officer (cash bond);

Form I-352, Immigration Bond;

Appellate decision of BIA;

Final order of Immigration judge; and

Form I-862, Notice to Appear, or other charging document.

If the obligor files a motion to reopen or reconsider an earlier decision of the AAO, place a copy of the appellate decision, the motion, and any attachment at the top of the record of proceeding. In such cases, you may submit your own brief to the AAO, rebutting the appellants argument.

(g) Withdrawal of Appeal. The obligor may submit a written withdrawal of an appeal before a decision is rendered.

(h) Administrative Process after the AAO Decision. If the breach notice is not appealed within 30 days of the AAOs decision, enter this information into DACS BOND screen. Inform the DMC by forwarding one of the two file copies of the I-323, stamped or marked No Appeal Filed, Breach Final as of (date).

If the AAO dismisses an appeal, update the bond screen in DACS accordingly. Inform the DMC by forwarding one of the two file copies of the I-323, stamped or marked Appeal Filed, Dismissed on (date) and Final on (date).

If the AAO upholds an appeal, forward a copy of the decision to the DMC, along with a copy of the I-323, stamped or marked Appeal Filed, Overturned on (date). Process the bond as required by the ruling; update DACS accordingly.

If an obligor who has submitted a mitigation request later files an appeal based on the same breach event, the AAO will not consider the appeal. In such a case, forward the appeal directly to the officer in charge adjudicating the mitigation request.

#### 12.11 Canceling Bonds.

(a) Action on a Delivery Bond after Voluntary Departure Is Granted. Do not cancel the delivery bond until the alien has met all requirements for voluntary departure.

If the immigration judge neither requires a bond nor imposes any other condition for voluntary departure (e.g., surrender of passport), cancel the delivery bond (if any).

If the immigration judge requires the posting of a voluntary departure bond and the alien posts the bond but fails to comply with the condition(s) imposed by the judge, cancel the voluntary departure bond (which has converted into an order of removal) and proceed with the demand on the delivery bond.

If an alien granted voluntary departure by an immigration judge appeals the finding of removability, you must maintain both bonds posted on the alien. This situation occurs because the regulations (8 CFR 1240.26(c)(3)) allow no exception to the five-business-day posting for voluntary departure and because ICE is under no legal or logical requirement to cancel the delivery bond after the posting of a voluntary departure bond. Maintain both bonds until the appeal is decided. If the appeal is dismissed, you must cancel the delivery bond; if the BIA finds the alien not removable, cancel both bonds.

(b) Cancellation of Voluntary Departure Bonds. You are required to cancel the voluntary departure bond of any alien:

Who is rearrested and back in ICE custody before the specified departure date (when such circumstances invalidate a voluntary departure bond, you must formally cancel the bond, in accordance with standard procedures); or

Whose voluntary departure has been verified. (NOTE: Verification documents are discussed in Chapter 13, Voluntary Departure).

(c) Cancellation Process. On the (b)(2)High screen in DACS, enter the cancellation date (b)(2)High, the canceled status (b)(2)High and when you sent the I-391 to the Debt Management Center (b)(2)High

If an obligor cannot produce the original I-305, Receipt of Immigration Officer, provide him/her with Form I-395, Affidavit in Lieu of Lost Receipt, to submit to the Debt Management Center.

See Bonds Field Financial Procedures, sections 3 and 4, for step-by-step instructions on canceling bonds (<http://ofm.ins/static/pdf/bonds.pdf>).

## 12.12 Information Management Systems for Bonds.

(a) Bond Management Information System (BMIS). The Debt Management Center uses BMIS to control the financial aspects of immigration-bond administration: processing new bonds, cancellations, and breaches; following-up with DRO officers on bond status; accounts receivable; debt collection, etc. (The Debt Management Center refers delinquent debt to Debt Counsel or the U.S. Treasury for further action.)

For access to the BMIS database, complete the Request for View-Only Access form (see (b)(2)High Simply provide your office location, PICS user ID, signature, and your supervisors authorizing signature. Once you have access, refer to Bond Management Information System: Instructions for Field Users with View-Only Access (Appendix 12-5, below).

(b) Deportable Alien Control System (DACS). See the Deportable Alien Control System User Manual. Sections 4.3.4 and 4.3.5 address bonds (Appendix 36-1, below). See also the DACS section in the docket-control chapter, above (Chapter 11.4).

## **Chapter 13: Removal Process: Voluntary Departure**

### 13.1 Authority for Voluntary Departure

### 13.2 Determining When to Permit Voluntary Departure

### 13.3 Pre-Hearing Voluntary Departure

### 13.4 Voluntary Departure During Proceedings

### 13.5 Pending Pre-IIRIRA Cases

### 13.6 Employment Authorization

### 13.7 Penalties for Failure to Adhere to Terms of Voluntary Departure

### 13.8 Other Considerations When Granting Voluntary Departure

### 13.9 Voluntary Departure with Safeguards

### 13.10 Voluntary Departure vs. Deferred Action

13.11 Voluntary Departure under the Family Unity Program

13.12 Procedures and Forms

13.13 Revocation of Voluntary Departure

13.14 Reinstatement of Voluntary Departure

13.15 Voluntary Departure at Government Expense

13.16 Case (Docket) Management

References:

INA: Section 240B

Regulations: 8 CFR 240.25, 240.26

13.1 Authority for Voluntary Departure.

Voluntary departure may be granted by the INS or an immigration judge under the conditions specified in section 240B of the Immigration and Nationality Act (Act). Although Section 301 of the Immigration Act of 1990 (IMMACT), Act of Nov. 29, 1990, Pub. L. 101-649, 104 Stat. 4978, provides that beneficiaries of the Family Unity Program may also be granted voluntary departure, this chapter does not fully cover voluntary departure under the Family Unity Program.

The regulations specify when authorized officers may grant voluntary departure, when an immigration judge (IJ) or the Board of Immigration Appeals (BIA) may grant voluntary departure, and when the Service and EOIR can jointly grant voluntary departure (see 8 CFR sections 240.25 and 1240.26), in accordance with the timeline presented below. Note that the first three time frames relate to pre-hearing voluntary departure under section 240B(a) of the Act, while the fourth time frame, As part of IJs order, relates to post-hearing voluntary departure under section 240B(b) of the Act.

| Authority for Voluntary Departure |  |   |  |                          |   |
|-----------------------------------|--|---|--|--------------------------|---|
| Time Period of Event Authority    | 1. From prior to arrest up to filing of Notice to Appear | 2. From filing of NTA up to 30 days after master calendar | 3. From 30 days after master calendar up to IJ's order | 4. As part of IJ's order | 5. After issuance of IJ's order (Extension of VD) |
| Service                           | Yes  | No  | No   | No                       | Yes   |
| IJ or BIA                         | No   | Yes   | No   | Yes                      | No  |
| Joint                             | No   | Yes   | Yes  | No                       | No  |

|           |  |  |  |  |  |
|-----------|--|--|--|--|--|
| Authority |  |  |  |  |  |
|-----------|--|--|--|--|--|

### 13.2 Determining When to Permit Voluntary Departure.

(a) General. Most aliens present in the United States illegally are eligible for voluntary departure. (See Chapter 15.1, below, for exceptions).

Those eligible may prefer to seek voluntary departure or "voluntary return" rather than undergo formal deportation. Both voluntary departure and voluntary return reduce processing time for INS personnel. At the same time they allow the individuals in question to avoid the potential penalties attached to formal removal proceedings.

(b) Restrictions. The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (Sept. 30, 1996) limited eligibility for voluntary departure. Strict criteria govern the granting of voluntary departure in lieu of a removal hearing pursuant to section 240 of the Act, as follows:

(1) Statutory prohibitions. An alien in any of the following categories is ineligible for voluntary departure:

Aggravated felons or terrorists, deportable under sections 237(a)(2)(A)(iii) or 237(a)(4)(B) of the Act, respectively;

Previously granted voluntary departure after having been found inadmissible under section 212(a)(6)(A) of the Act;

In violation of the terms of voluntary departure granted during the past 10 years;

Overstayed the voluntary departure limit of 120 days allowed before or 60 days after the conclusion of a removal hearing; and

Classified as arriving aliens.

(2) Likelihood of Departing. Available means of departure (financial and otherwise); willingness to cooperate; and case-specific factors make it reasonable to assume an alien will comply with the departure requirements.

(c) Other Factors. Consider the pros and cons in each case before deciding to offer voluntary departure, such as:

Prior entry without inspection or other immigration violation;

Circumstances of apprehension, such as resisting arrest, or failing to cooperate with the arresting officers indicating a need for more stringent enforcement action;



Age, infirmity, or other mitigating factors;

Signs of illegal activity;

Criminal history. Neither an immigration judge nor the Service will grant voluntary departure without first considering the aliens criminal history. Run a criminal history check on all cases unless you have one that is current (within the past three months) in the A file. Tab and date your criminal history checks. Criminal history checks can be run through Interagency Border Inspection System (IBIS), Treasury Enforcement Computer System (TECS) or National Crime Information Center (NCIC). See Chapter 4.7 of the Special Agents Field Manual and Chapter 41.8 of this manual.

Local or national policy or operational considerations requiring a stricter enforcement policy at a particular location or during a particular time period.

### 13.3 Pre-Hearing Voluntary Departure.

Prior to initiation of proceedings, INS may grant voluntary departure. The maximum time allowed for departure is 120 days, without exception. The Service may impose additional conditions for departure, e.g., requiring the posting of a bond (mandatory minimum \$500); delivery of a passport, confirmed ticket, or similar evidence of intent to depart; etc. [See 8 CFR 240.25.]

### 13.4 Voluntary Departure During Proceedings.

(a) Background. IIRIRA and its implementing regulations significantly changed the length of the departure period and the conditions under which voluntary departure may be authorized. They also specify by whom and when voluntary departure may be granted. Prior to April 1, 1997, voluntary departure was often granted for extended periods of time. IIRIRA makes clear that voluntary departure is intended only as a relatively short period of time to depart.

(b) Voluntary Departure After Proceedings Have Begun. Voluntary departure includes two distinct categories: (i) At the commencement of removal proceedings (pursuant to section 240B(a) of the Act) and (ii) at the conclusion of removal proceedings (pursuant to 240B(b) of the Act). If the Service so stipulates, voluntary departure may also be granted while proceedings are in progress (see 8 CFR 240.26(b)(2)).

(1) At the commencement of removal proceedings (master calendar), the immigration judge may grant voluntary departure for a period not to exceed 120 days, provided the alien:

Makes no additional requests for relief;

Concedes removability;

Waives appeal of all issues; and

Has not been convicted of an aggravated felony and is not deportable under section 237(a)(4) of the Act.

(2) At the conclusion of proceedings (merits hearing), the immigration judge may grant voluntary departure for a period not to exceed 60 days, provided the alien:

Had been physically present in the United States for one year before service of the Notice to Appear;

Has demonstrated good moral character for at least the past 5 years;

Provides evidence of the means to depart and intention of doing so; and

Has not been convicted of an aggravated felony and is not deportable under section 237(a)(4) of the Act.

In addition, for voluntary departure at the conclusion of proceedings, within five business days of the immigration judges order, the alien must post a voluntary departure bond (mandatory minimum \$500).

Failure to post the voluntary departure bond within five business days automatically vacates the order of voluntary departure, and the immigration judges voluntary departure order reverts to an alternate final order of removal. The final order is effective upon issuance. The officer will then take the actions necessary to effect the aliens removal.

(c) Appeals. If the alien is granted voluntary departure at the conclusion of proceedings and appeals the decision, in order for the alien to avail himself/herself of the voluntary departure he/she must post the voluntary departure bond, and if detained, remains in Service custody until he/she posts the bond (delivery bond) on the merits of the case. The Service can have two bonds on the same case. If not detained, once the voluntary departure is granted the delivery bond (bond on the merits of the case) is canceled unless the alien appeals.

(d) Failure to Depart. If the alien fails to depart as required by the voluntary departure order, a surrender notice will immediately be sent to the alien. If the alien fails to comply with the surrender notice, the Case Category in DACS will change from 3 or 8C to 5B or 8E. The alien is at that point a fugitive and the case will be turned over to the Fugitive Operations Unit. See Chapter 19: Removal Process: National Fugitive Operations Program (NFOP) for a more detailed explanation of the process.

(e) Extending Deadline for Voluntary Departure. If the alien has been granted less than the maximum time for voluntary departure (120 days pre- or 60 days post-hearing), the Service may, upon request, extend the deadline to the maximum 120 or 60 days, but only if the alien proves a need for more time and provides evidence of intent to depart. The

Service may make the granting of an extension conditional on the presentation of documents, the posting of a bond or other conditions to ensure departure. Standard operating procedure requires that an officer in receipt of an extension request render a decision as soon as possible, in consideration of the serious consequences to the alien of failing to adhere to the terms of voluntary departure

Note: The mere filing of a request for extension does not absolve the alien from penalties that may accrue while the request is pending.

### 13.5 Pending Pre-IIRIRA Cases.

Pre-IIRIRA rules continue to apply to cases pending before IIRIRAs implementation on April 1, 1997. However, the officer considering an extension request under the more generous terms available pre-IIRIRA must heed the IIRIRA legislators intent to limit the time allowed for voluntary departure. Only extraordinary circumstances can justify extending the voluntary departure period contrary to the will of Congress. See 8 CFR Part 240, Subpart F.

### 13.6 Employment Authorization.

A person granted voluntary departure may not apply for or receive work authorization, and any previous grant of employment authorization may not be extended.

### 13.7 Penalties for Failure to Adhere to Terms of Voluntary Departure.

Anyone failing to comply with the terms of a grant of voluntary departure will be denied the privilege of voluntary departure for 10 years and may incur civil penalties (see Section 240B(d) of the Act). You must understand and impress on each person granted voluntary departure the consequences of failing to comply with the specified terms, including:

- Formal removal proceedings;

- Ineligibility for voluntary departure, whether from the Service or an immigration judge, during the next 10 years; and

- Ineligibility for certain forms of relief, including benefits provided under sections 245 (Adjustment of Status to a Lawful Permanent Resident), 248 (Change of Nonimmigrant Classification) and 249 (Record of Admission for Permanent Residence in the Case of Certain Aliens Who Entered the US prior to January 1, 1972) of the Act.

(See Form I-210, Voluntary Departure and Verification of Departure.)

You must also issue the Form I-210 in conjunction with every grant of voluntary departure, and secure the aliens signature agreeing to its terms. The alien must understand that in all orders of voluntary departure there is an alternate order of removal if the alien

fails to depart by the date specified. You must receive an executed Voluntary Departure and Verification of Departure, Form I-210 within 30 days of the voluntary departure date specified in the judges order. If you do not receive verification of departure 30 days after the voluntary departure order date, issue an Order of Removal/Deportation, Form I-205 and Notice to Deportable Alien, Form I-166. See Chapter 19: Removal Process: National Fugitive Operations Program (NFOP) of this manual on how to proceed when an alien fails to report to a surrender notice and all attempts to locate the alien have failed.

### 13.8 Other Considerations When Granting Voluntary Departure.

(a) Advantages. An alien granted voluntary departure avoids the penalties accompanying an order of deportation or removal. Time spent in the United States pursuant to a grant of voluntary departure is not considered time where an alien is illegally present.

In explaining voluntary departure to an eligible alien, do not attempt to influence the aliens decision whether to choose voluntary departure or to appear before an immigration judge.

(b) Disadvantages. The failure to depart by the scheduled date makes the alien subject to a civil penalty of up to \$5,000. (Regulations and procedures to assess and collect this penalty are under development.) Furthermore, as noted above, the failure of an alien to depart pursuant to a grant of voluntary departure renders that individual ineligible for certain forms of relief.

(c) Bond prior to completion of removal proceedings. When a bond is required as a condition of voluntary departure the amount must equal or exceed \$500. This amount will cover the associated processing and tracking costs. The amount at risk if the bond is forfeited may be a deciding factor for certain individuals considering whether to depart voluntarily, as agreed, or to violate the agreement. With this in mind, the officer should set bond high enough to provide the alien reasonably likely to depart with further incentive, but not so high as to make it unattainable.

(d) Bars to re-admission: Unlawful presence. The period of voluntary departure that is granted does not contribute to the time considered as illegal presence. (See section 212(a)(9)(B)(ii) of the Act.) However, if the alien fails to voluntarily depart as required by the date specified the order automatically converts to an order of removal and unlawful presence commences as of that date.

(e) Cancellation of Non-immigrant Visa. All non-immigrant visas will be canceled prior to granting voluntary departure. Use Form I-275, Withdrawal of Application for Admission/Consular Notification to cancel the visa in accordance with 22 CFR 41.122(h)(5).

### 13.9 Voluntary Departure with Safeguards.

The Service may choose to allow the alien to leave under voluntary departure without safeguards, voluntary departure with safeguards, or it may place the alien in removal proceedings. The distinctions between the first two options can be significant.

An alien granted voluntary departure with safeguards must depart immediately, under the direct observation of the officer.

In general, an alien granted voluntary departure without safeguards is released from Service custody, remaining at liberty until the required departure date.

If an alien has previously been granted voluntary departure by an immigration judge but failed to depart as specified, an alternate order of removal will automatically be in effect. If the alien has not already departed under such alternate order, that alternate order should be executed. If the alien has departed on his own after the expiration of the voluntary departure under an order of removal, the outstanding order may be reinstated in accordance with section 241(a)(5) of the Act if the alien illegally reenters the United States. [See Chapter 14.8, below, for discussion of reinstatement of a previous removal order.]

#### 13.10 Voluntary Departure vs. Deferred Action.

In exceptional circumstances, the Service may have reason to defer an individual's removal proceedings, placing him/her in the deferred action category [see Chapter 20]. Deferred action is not a "right" nor is there any procedure whereby it can be formally requested.

#### 13.11 Voluntary Departure under the Family Unity Program.

Although as an enforcement officer you will probably not be involved in issuing benefits under the Family Unity Program (8 CFR 236, Subpart B), you may encounter aliens covered by the program. Therefore, you must recognize the following differences. The voluntary departure available through the Family Unity Program:

- Is usually granted through an application filed through one of the service centers;

- Applies only to the qualifying spouse or unmarried child of a legalized alien (as defined in 8 CFR 236.11);

- Is usually granted in two-year increments;

- May be extended repeatedly;

- Does not count toward the maximum time limits of 120 days before or during hearings, or 60 days after hearings, and

- Cannot be cancelled under the provisions of section 240B.

### 13.12 Procedures and Forms.

You may use Form I-826, Notice of Rights and Request for Disposition, to voluntarily return an alien in Service custody who is departing immediately and who is not in proceedings (prior to the filing of the Notice to Appear).

Use Form I-210, Voluntary Departure and Verification of Departure, to document any decision to permit or extend/not extend voluntary departure. While local processing may vary, you must interpret and complete the Form I-210 as directed below.

Write your address and telephone number in the top left hand corner.

1st and 2nd blocks: When granting voluntary departure, check the 1st box for a nonimmigrant in violation of his/her nonimmigrant status; for anyone else, check the 2nd box.

3rd block: Check the 3rd box to indicate approval or denial of a request to extend the departure time. Indicate, approved or denied in the blank provided. If granting an extension, fill in the second blank with the new date, then skip to the last (7th) block. If denying an extension, fill in the second blank with the originally scheduled departure date, even if that date has passed.

4th block: Enter departure information as indicated. Attach departure documentation (copy of passport and ticket or itinerary) to the I-210 for the A file.

After completing the Form I-210 and explaining voluntary departure requirements and consequences of failure to comply, have the alien sign acknowledgement of conditions and receipt of form. You, as the serving officer, will also sign the I-210. Attach a picture of the alien to the form and take a fingerprint of his/her right index finger as indicated on the form. Give the alien the original and place a copy in the alien's file. Also provide a copy to the alien's attorney or other authorized representative who has filed a Form G-28, Notice of Entry of Appearance as Attorney or Representative.

Verification of Departure box: First, ensure the alien presenting the I-210 is the person named in the form by matching the picture and fingerprint with the person and passport or other identity documents. After you have verified the above information, execute the form and return it to the address provided (top left-hand corner of the form).

### 13.13 Revocation of Voluntary Departure.

An officer authorized to grant voluntary departure may also, in writing, revoke the privilege (see 8 CFR 240.25(f)). The written revocation must cite the statutory basis for the revocation. The revocation may not be appealed.

### 13.14 Reinstatement of Voluntary Departure.

Pursuant to 8 CFR 1240.26(h), an immigration judge or the BIA may reinstate voluntary departure in a removal proceeding reopened for some purpose unrelated to voluntary departure, provided the reopening precedes the original voluntary departure date. In such cases, the 60- or 120-day limit continues to apply (unless proceedings commenced before April 1, 1997).

#### 13.15 Voluntary Departure at Government Expense.

The Service may assume the costs of an aliens voluntary removal when it is in the governments interest (see section 241(e)(3)(C) of the Act), except after a removal hearing (see 13.4, above). Post-hearing voluntary departure is available only to aliens with the means to pay their own transportation costs.

#### 13.16 Case (Docket) Management.

(b)(2)High

## **Chapter 14: Removal Process: Non-Hearing Removal Cases**

### 14.1    General

### 14.2    Visa Waiver Pilot Program Violators

### 14.3    Crewmen

- 14.4 Stowaways
- 14.5 S-Nonimmigrant Visa Holders
- 14.6 Section 250 Removals
- 14.7 Administrative Removals
- 14.8 Reinstatement of a Final Order
- 14.9 Judicial Order
- 14.10 Alien Terrorist Removal Procedures
- 14.11 Expedited Removals

References:

INA: 101(a)(15)(A), 217, 208, 238, 241, 250, 252

Regulations: 8 CFR 217.4, 208.31, 241.8, 250, 252.2

Other: Administrative Removal Proceedings Manual (M-430), Appendix 14-1

Memoranda: Designation of National Security Matters (December 12, 2002), Appendix 11-5, and Guidance Governing the S Nonimmigrant Visa (December 23, 2002), Appendix 14-5.

14.1 General.

(a) Introduction. There are several categories of aliens who are not entitled to a removal hearing before an immigration judge, as provided by section 240 of the Act. These aliens are specifically precluded from such hearings, as well as certain forms of relief only available in Immigration Court. Once you determine that an alien who is apprehended falls within one of the classes not entitled to a hearing before an immigration judge, the removal procedures are simplified. Additionally, removal of an alien under these procedures carries the same consequences as an order issued in an immigration court. The specific classes of aliens included in this group, and the procedures to be followed, are described below.

In addition to those aliens not entitled to a removal hearing, there are many aliens who waive their right to a formal hearing, electing instead to voluntarily return to their home country. Such voluntary returns are a form of voluntary departure, not a removal, and are discussed in Chapter 13.



(b) Processing Forms. Do not, under any circumstances, issue the following forms in conjunction with a non-hearing removal case: Notice to Appear, Form I-862, Notice of Custody Determination, Form I-286 and Notice of Rights and Request for Disposition, Form I-862. Place Form I-170, Deportation Case Check Sheet, on the right side of the file to track case progress, in the same manner as a regular hearing case. Some actions on the I-170 are not required in a non-hearing case. These blocks should be marked "N/A" and initialed by the officer. Additional forms are discussed in the appropriate subsections for each type of case.

(c) Asylum or Withholding of Deportation or Removal. If an alien in any of these categories indicates a fear or persecution or torture, the alien must be referred for a hearing and decision on the claim. In some cases the alien is referred directly to an immigration judge through use of the Notice of Referral to Immigration Judge, Form I-863. In other cases there is a preliminary review by an asylum officer. The following chart illustrates the action by an asylum officer or immigration judge in the various cases.

#### DECISIONS RELATING TO ASYLUM/WITHHOLDING OF DEPORTATION OR REMOVAL

Type of Case Alien

Action by Asylum Officer

Action by Immigration Judge

VWPP (at entry or after)

None

Decision on Asylum or Withholding

Crewman

None

Decision on Asylum or Withholding

Stowaway

Credible Fear Decision

Full Consideration of Asylum or Withholding if Credible Fear Found; Review of Negative Credible Fear if Requested

"S" Immigrant

None

Decision on Asylum or Withholding

Reinstatement of Prior Order

Reasonable Fear Decision Relating to Withholding or Deferral Only. \*

Full Consideration of Asylum or Withholding if Credible Fear Found; Review of Negative Decision if Requested

Administrative Deportation under 238(b) INA (See [14.7](#) of this Chapter for a discussion of Administrative Deportation)

Reasonable Fear Decision Relating to Withholding or Deferral Only. \*

Full Consideration of Asylum or Withholding if Credible Fear Found; Review of Negative Decision if Requested

\* Under sections [238\(b\)\(5\)](#) and [241\(a\)\(5\)](#) of the Act, aliens who meet the criteria to be placed in these proceedings are statutorily ineligible for discretionary relief. Asylum is discretionary but withholding or deferral of deportation or removal is mandatory if the alien meets the criteria. See [Chapter 17](#) of this Manual for further discussion of withholding of removal.

#### 14.2 Visa Waiver Program.

The Visa Waiver program is discussed in depth in [Chapter 15.7](#) of the Inspector's Field Manual. Refer to this link to become familiar with the program and procedures.

(a) General. An alien admitted under the Visa Waiver Pilot Program (section [217](#) of the Act) who violates status or stays beyond the 90-day admission period is not eligible for a removal hearing, having 'waived' that right upon signing the [Form I-94W](#). These aliens may request an asylum hearing, however. If there is no asylum claim or if asylum is denied, removal may proceed. The order of removal is in the form of a letter from the district director, advising the alien of the determination concerning the violation and ordering removal from the U.S.

(b) Procedure. Upon encountering a visa waiver violator case, the deportation officer may be faced with a variety of unique circumstances. Though evidence of the arrival carrier may exist in the file, certain factors may cause some carriers to refuse assistance in completing the removal, depending upon the carrier/transportation line responsible for the alien's arrival in the US, whether the alien was apprehended at entry and ordered removed, or whether the alien was admitted (legally or fraudulently) and has remained in the US for some period of time. Most unique circumstances involve aliens in violation of the VWPP and apprehended in the interior by Investigations or through the Institutional

Removal program. Ensure that the case is entered into DACS as case category 10, and that the decision code is 0.

(1) VWPP Refusals. Arriving aliens refused admission may become part of the detained docket due to criminal prosecution or asylum screening. Ensure that these matters are complete and closed and that the file is complete, as outlined in Chapter 15.7(g) of the Inspector's Field Manual. Generally, such cases are easily processed. In cases of criminal aliens, post certified copies of the conviction documents to the A-file, annotate the appropriate criminal violation codes in the CRIM screens of DACS, and follow the removal procedures discussed in Chapter 16.

(2) VWPP Violators. Enforcement activity may result in the apprehension of a VWPP violator subsequent to admission. Generally, Investigations prepares the case, including the Order of Removal and Warrant of Removal. If not already part of the file, the deportation officer will prepare a notice of intent, to be served on the subject, and an order and warrant. Examples are included at Appendix 14.2. These cases may present some unique deportation/removal challenges. As noted previously, ensure that pending criminal matters and litigation are complete and made a part of the A-file. Make effort to effect the removal at carrier expense to the country of embarkation. This is accomplished by preparing and serving upon the carrier Form I-259 (see Chapter 16.7). In many instances, however, though arrival documentation may exist in service databases, the liable carrier denies responsibility or liability and refuses to accept the subject for removal. In such cases, it may be necessary to remove the alien at government expense, and reimbursement may be sought from the carrier through the financial branch. Also, in cases of fraudulent identity or criminals, it may not be possible to remove the subject to the last point of embarkation prior to arrival in the US. The deportation officer may find it necessary in such cases to determine the true citizenship or nationality of the alien, pursue obtaining an appropriate travel document, and proceed with the removal at government expense. Refer to Chapter 16 for more detail regarding travel documents and the removal process.

#### 14.3 Crewmembers.

(a) General. Crewmembers apprehended for violations of status fall into four categories:

- A crewmember who has remained in the United States beyond 29 days without extension granted by the Service;
- An overstay crewmember whose vessel or aircraft has departed but who has not been paid off or discharged in accordance with section 252(a)(2) of the Act;
- A crewmember whose ship is still in port but who has engaged in activities inconsistent with the terms of the landing permit; or
- A crewmember who has been refused a landing permit or whose landing permit was revoked, but who left the vessel in violation of section 252(b) of the Act.

Regardless of the type of violation, such crewmembers are not entitled to any hearing before an immigration judge, except for the purpose of resolving an asylum claim (see the Inspector's Field Manual, Chapter 23.18, regarding asylum claims by vessel crewmembers). Crewmember cases are annotated in DACS as case category 14.

(b) Processing. Absent an asylum claim, a crewmember whose vessel remains in the U.S. may be issued a Notice of Revocation, Form I-99, and returned to the vessel for removal, in accordance with procedures described in the Inspector's Field Manual, Chapter 23.10. If the vessel or aircraft has departed the U.S., an alien crewmember may be ordered removed by issuing a Notice to Detain, Remove or Present Alien, Form I-259, to the transportation line or agency representing the transportation line on which the alien served. In addition, if removal occurs within five years of the crewmember's landing in the United States, the carrier is liable for the costs of removal. When carrier liability exists, complete and serve a Notice to Transportation Line Regarding Alien Removal Expenses, Form I-288. Expenses billable to a carrier may be tracked and recorded on a Record of Expenses Billable to Transportation Company, Form I-380. When the transportation company agent directly provides transportation and a GTR is not issued, an explanation should be included on the I-380, block 13. Upon removal, prepare Form G-251, serving the original on the carrier or agent, retaining a copy for the file and sending the remaining copies to the regional office along with a copy of the I-380.

As with all cases, if not already accomplished, violators will be fingerprinted using Form FD-249. Unless the final disposition is reflected on the card, an R-84 must also be completed when removal is verified.

Any assigned alien file number should be entered, in ink, on the inside back cover of the alien's passport or seaman's book, along with the date and place of violation.

(c) Crewmembers Arriving Prior to April 1, 1997. An exception to the preceding discussion exists for crewmembers who landed prior to April 1, 1997. Such crewmember who is apprehended in violation of status and whose vessel has departed must be placed into removal proceedings under section 240 of the Act unless he or she is willing to depart voluntarily. Procedures for assessing carrier liability remain the same. (Refer to 8 CFR 252.2.)

(d) Joining a Vessel for Deportation or Removal. Whenever an alien crewmember is being moved to another port to join a vessel for removal, a memorandum should be attached to the transfer sheet, Form I-216, providing the name and address of the shipping company, the name of the agent with whom arrangements were made, and the office and home telephone numbers of the agent. This can avoid complications if the ship's captain has not been advised in advance of the deportation or removal plans.

(e) Non-willful Violators. See procedures described in the Inspector's Field Manual, Chapter 23.13. Control should be maintained to ensure the vessel's departure. Statistically, do not count such cases as voluntary departure grants under docket control.

Report such cases only on the G-23.18, as deportable aliens located and granted voluntary departure.

(f) Special Cases-Deserters from Greek and Spanish Ships of War. Spain and Greece are the only foreign governments with whom treaties are still in effect concerning deserters from ships of war in United States ports (Article XXIV of the 1903 Treaty with Spain; Article XIII of the Convention between the United States and Greece). Although these cases will be rare, procedures for dealing with deserters from Spanish or Greek ships of war can be found at 8 CFR 252.5. See Appendix 14-3 of this manual for samples of notification of charges and findings.

(g) Carrier Fines. In cases where a carrier fails or refuses to take custody of and remove an alien crewman subsequent to the issuance of Form I-259, the deportation officer should recommend the imposition of an administrative fine, through the National Fines Office. Whether the I-259 was issued by Inspections (and the crewman absconded) or the crewman was encountered in an illegal status prior to the issuance of an I-259 is immaterial. Refer to the Inspectors Field Manual, Chapter 43, for detailed information regarding the fines process.

#### 14.4 Stowaways.

A stowaway, whether or not landed, is not entitled to a removal hearing. Unless such case involves an asylum claim, the alien may be ordered removed by serving Forms I-259 and I-288 on the affected carrier. See 8 CFR 235.1(d)(4) and 8 CFR 241.11. Serve the alien with Form I-296, checking the second block (10 year bar). Processing asylum claims by stowaways is discussed further in the Inspector's Field Manual, Chapter 23.18. Stowaways are annotated in DACS as (b)(2)High

Occasionally, you may encounter an alien who claims to be a stowaway, but cannot or will not provide information concerning the name of the vessel of arrival. Prior to April 1, 1997, such aliens could be handled in the same way as any other EWI (entry without inspection) case and placed into removal proceedings. IIRIRA, however, directs that stowaways, regardless of when encountered, are to be removed without a hearing. Such aliens may be removed by an order signed by the district director (letterhead) citing section 235(a)(2) of the Act as the authority for the action. Serve the alien with Form I-296, checking the second block (10 year bar). For additional information on stowaways see the Inspector's Field Manual, Chapter 23.8.

#### 14.5 Nonimmigrant S-Visa Holders.

In order to receive this nonimmigrant classification, an alien must waive the right to a removal hearing. See 8 CFR 236.4 for procedures for these aliens. S-visa removal cases are annotated in (b)(2)High if the subject is in violation of status (as in having been convicted of a crime since gaining entry under an S-visa). The subject is ordered removed by the District Director and the decision Code is (2)H. The case is closed using Dep Cleared Stat code 6. The removal order

is prepared in memorandum form, similar to that used in Visa Waiver (VWPP) cases, and an example set of forms is located in Appendix 14-4.

If you encounter the case of a detained alien for whom an S-visa is being pursued by the Service or another law enforcement agency, understand that no such alien may be removed while such a request is pending. That is to say, the removal is deferred, until a decision is rendered by headquarters. The subject, though, may remain in custody. Refer to the memorandum Guidance Governing the S Nonimmigrant Visa, dated December 23, 2002, Appendix 14-5, for an in-depth examination of this subject. For additional details regarding this subject, refer to the Special Agent's Field Manual Chapter 41.4, and the Inspector's Field Manual Chapter 15.4(s).

#### 14.6 Section 250 Removals.

(a) General. Section 250 of the Act provides for the removal of an alien who is in distress or receiving public assistance and who desires to be removed from the United States. Such an alien may be returned to his native country, the country from which he came, the country of which he is a citizen or subject, or to any other country to which he wishes to go and which will receive him. Removal in such cases may be at government expense. In some instances, the alien's own consulate, if contacted, will arrange for removal. If the removal is at the expense of the United States Government, removal under section 250 of the Act is similar to actual deportation in that an alien so removed requires permission to reapply before he or she may be granted a visa or readmission to the United States.

(b) Application. In accordance with 8 CFR 250, an alien requesting removal under section 250 of the Act must file Form I-243, Application for Removal, with the district director. The alien shall be required to obtain a travel document if necessary to effect his removal, but if he is unable to defray the costs, they may be paid from the appropriated funds. If an applicant is suffering from any mental disability, the examining officer shall determine whether the applicant sufficiently understands the proceedings to express a desire to be removed.

(c) Decision. If the district director denies an application, there is no appeal of the decision. If the district director approves the application, Form I-202, Authorization for Removal, will be issued. When the applicant is an alien spouse, or parent, of a United States citizen who intends to accompany the applicant and is unable to pay the transportation costs, such costs may be assumed at Government expense as necessary to accomplish the removal of the applicant.

(d) Removal. If practical, removal cases may be joined to a deportation party. Care and maintenance is not provided until the applicant is actually joined to a deportation party or otherwise sent forward. When removal to Canada is authorized, consent for return to that country is obtained as in the case of a Canadian deportee, and a copy of Form I-243 furnished.

(e) Closing Actions. When the applicant has been removed, Form I-202 is endorsed by the departure port and returned to the authorizing district office. Any passport or other travel document in the possession of an alien being removed is endorsed as follows; "Rem 3/29/03 NYC sec. 250 A12 123 901". If there is a nonimmigrant visa, the endorsement is placed on the page containing the visa. The case is closed in DACS as X.

#### 14.7 Administrative Removals.

(a) General. Administrative removal of criminal aliens, i.e., removal without formal hearing before an immigration judge, is provided by section 238(b) of the Act in the case of certain aliens. The policies and procedures for such administrative removals are discussed in detail in the Administrative Removal Handbook M-430, Appendix 14-1.

#### 14.8 Reinstatement of Final Orders.

(a) Applicability. Section 241(a)(5) of the Act provides that the Attorney General will reinstate (without referral to an immigration court) a final order against an alien who illegally reenters the United States after being deported, excluded, or removed from the United States under a final order, or who departed voluntarily while under a final order of deportation, exclusion, or removal ("self departs"), regardless of the date that the previous order was entered. Thus, an alien who was deported five years ago, but who illegally reenters the United States today, is subject to reinstatement of the final order. Generally, this provision is not limited to orders of removal entered after the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, within which this provision was created, (the 9th and 6th Circuit Courts of Appeal have ruled that the underlying illegal reentry must have occurred after April 1, 1997 in order for this provision of law to apply).

Reinstatement is not applicable, however, to an alien who was granted voluntary departure by an immigration judge and left the United States in compliance with the terms of that grant. In such instances, the alien was not subject to a final order of deportation or removal.

Reinstatement does not preclude criminal prosecution in accordance with local procedures and guidelines. However, in order to properly preserve a case for criminal prosecution, the processing officer must advise an alien of his or her Miranda Rights pursuant to *Miranda v. State of Arizona*, 384 U.S. 436 (1966) prior to taking the alien's sworn statement.

Much like expedited removal under Section 235(b)(1) of the Act, reinstatement of a final order is a significant expansion in authority for immigration officers to remove aliens from the United States without referral to an immigration judge. It is particularly important in this context to ensure that officers follow all applicable procedures which ensure that aliens understand the reinstatement process, and that officers carefully evaluate all available evidence before determining that an alien was previously removed and illegally reentered the United States.

(b) Procedure. Refer additionally to 8 CFR 241.8.

(1) Required Elements. Before reinstating a prior order, the officer processing the case must determine:

(A) That the alien believed to have reentered illegally was previously excluded, deported, or removed from the United States. Included in this class of aliens are those who voluntarily departed the United States while subject to a final order of exclusion, deportation, or removal ("self departs"). An alien who complied with the terms of a voluntary departure order is not subject to reinstatement. If, however, the alien stayed beyond the period authorized for voluntary departure, or left of his or her own volition while a final order was outstanding (i.e., the alien "self-deported"), the alien is subject to reinstatement.

The officer must obtain the alien's A-file or copies of the documents contained therein to verify that the alien was subject to a final order and that the previous order was executed. In uncontested cases, suitable database printouts to document these facts will suffice.

(B) That the alien believed to have reentered illegally is the same alien as the one previously removed. If, during questioning, the alien admits to having been previously excluded, deported or removed, or to having self-deported by leaving after the expiration of a voluntary departure period with an alternate order, the Form I-213 and the sworn statement must so indicate. If a record check or fingerprint hit reveals such prior adverse action, that information must be included in the A-file. The alien should be questioned and confronted with any relevant adverse information from the A-file, record check or fingerprint hit, and such information must be included in the I-213 and sworn statement, if applicable.

If the alien disputes the fact that he or she was previously removed, a comparison of the alien's fingerprints with those in the A-file documenting the previous removal must be completed to document positively the alien's identity. The fingerprint comparison must be completed by a locally available expert, or by the Forensic Document Laboratory via Photophone. In the absence of fingerprints in a disputed case, the alien shall not be removed pursuant to this paragraph.

(C) That the alien did in fact illegally reenter the United States. In making this determination, the officer shall consider all relevant evidence, including statements made by the alien and any evidence in the alien's possession. The officer shall attempt to verify an alien's claim, if any, that he or she was lawfully admitted, which shall include a check of service data systems available to the officer.

If the alien has a former order of deportation or removal that the officer finds should be reinstated, but is in possession of an apparently valid visa permitting him or her to enter the United States, the officer should determine whether the alien applied for and was granted permission to reenter the United States from the Attorney General. If the alien



did not apply for and receive permission to reenter, he or she did illegally reenter the United States despite having the allegedly valid visa and is subject to reinstatement.

In any case in which the officer is not able to satisfactorily establish the preceding facts, the previous order cannot be reinstated, and the alien must be processed for removal through other applicable procedures, such as administrative removal under section 238 of the Act, or removal proceedings before an immigration judge under section 240 of the Act.

(2) Record of Sworn Statement. In all cases in which an order may be reinstated, the officer must create a record of sworn statement. The record of sworn statement will document admissions, if any, relevant to determining whether the alien is subject to reinstatement, and whether the alien expressed a fear of persecution or torture if returned on the reinstated order. The basic Record of Sworn Statement is recorded using Form I-877.

In addition to addressing routine informational elements (identity, alienage, and the required elements listed in paragraph (b)(1) above), the sworn statement must include the following question and the alien's response thereto: "Do you have any fear of persecution or torture should you be removed from the United States?"

If the alien refuses to provide a sworn statement, the record should so indicate. An alien's refusal to execute a sworn statement does not preclude reinstatement of a prior order, provided that the record establishes that all of the required elements discussed in paragraph (b)(1) have been satisfied. If the alien refuses to give a sworn statement, the officer must record whatever information the alien orally provided that relates to reinstatement of the order or to any claim of possible persecution.

(3) Form I-871 and Notification to the Alien. Once the processing officer is satisfied that the alien has been clearly identified and is subject to the reinstatement provision (and the sworn statement has been taken), the officer prepares Form I-871, Notice of Intent/ Decision to Reinstate Prior Order. The I-871 must be typed and the officer's printed name shall be legible. The processing officer completes and signs the top portion of the form, provides a copy to the alien and retains a copy for the file. The officer must read, or have read, the notice to the alien in a language the alien understands. The officer will ask the alien if he or she has any evidence to present to rebut the determination that the alien illegally reentered the United States after deportation or removal. The alien has the right to review the evidence that the officer intends to rely on in making the final determination. The alien signs the second box of the file copy and indicates whether he or she intends to rebut the officer's determination. In the event that the alien declines to sign the form, the officer shall note the block that a copy of the form was provided, but that the alien declined to acknowledge receipt or provide any response. If the alien provides a response, the officer shall review the information provided and promptly determine whether reevaluation of the decision or further investigation is warranted. If not, or if no additional information is provided, the officer shall proceed with reinstatement based on the information already available.

(4) Reinstatement of a Final Order. If, after considering the alien's response, the processing officer determines that the alien's prior order should be reinstated, the officer shall create the Record of Proceedings (ROP) for presentation to the deciding official. The ROP shall contain the following:

- Form I-871,
- the prior final order and executed warrant of removal (Form I-205 or I-296),
- Warning to Alien Ordered Removed or Deported (Form I-294),
- the sworn statement or the alien's declination to provide such statement, or officer's attestation of the alien's refusal,
- any evidence provided by the alien,
- any additional documentation that rebuts the alien's assertion that reinstatement was improper,
- fingerprint match, if required, and
- Record of Deportable Alien (Form I- 213).

The officer presents the Form I-871 and all relevant evidence to a deciding officer for review and signature at the bottom of the form. A deciding officer is any officer authorized to issue a Notice to Appear, as listed in 8 CFR 239.1.

After the deciding officer signs the Form I-871 reinstating the prior order, the officer issues a new Warrant of Removal, Form I-205, in accordance with 8 CFR 241.2 . The officer indicates on the I-205, in the section reserved for provisions of law, that removal is pursuant to section 241(a)(5) of the Act, as amended by IIRIRA.

(c) Aliens Expressing a Fear of Persecution or Torture. If the alien expresses a fear of persecution or torture, the alien must be referred to an asylum officer, who determines whether the alien has a reasonable fear of persecution or torture. The fact that an alien will be referred to an asylum officer does not preclude the completion of the reinstatement order. If the alien is subject to reinstatement of the prior order, the reinstatement processing should be finished before forwarding the case to an asylum officer. In referring the alien to the asylum officer, the processing officer provides the alien with Form I-589 and the appropriate list of providers of free legal services. If the asylum officer determines that the alien has a reasonable fear, the asylum officer will refer the case to an immigration judge for a determination only of withholding of removal under section 241(b)(3) of the Act or Article 3 of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (the Torture Convention), or for deferral of removal. Either party may appeal the decision of the immigration judge to the Board of Immigration Appeals.

If the asylum officer finds that the alien does not have a reasonable fear, the alien will have an opportunity for an expeditious review by an immigration judge of such negative finding. If the immigration judge upholds the asylum officer's decision, the alien may be removed without further review. If the immigration judge reverses the asylum officer's decision, the immigration judge will make a determination only to withholding or deferral of removal. Either party may appeal this decision of the immigration judge to the Board of Immigration Appeals.

Withholding and deferral of removal are country specific. In some cases, application may be made for removal to an alternate country, based upon the request of the alien or pursuant to arrangements made by the Service. Form I-241 is used in these circumstances. In such cases, the reinstated order may be executed if the alien is accepted by, and is being removed to, such alternate country.

(d) Criminal Prosecution. Whenever possible, reinstatement processing should be completed before referring an alien for criminal prosecution. Aliens whose reinstatement processing is completed prior to criminal prosecution will be removed more quickly after any criminal sentence is served. Upon remanding the subject to the custody of another law enforcement agency, the officer must lodge a detainer, Form I-247, and note on the form that a final order has been entered. Officers must be aware that, once the Order of Removal is final, the detention of the alien is permissible only to the extent described as the Removal Period in section 241(a)(6) of the Act, for the purpose of executing the Warrant of Removal. For terrorist cases, see Chapter 14.10.

(e) Execution of Reinstated Final Order. At the time of removal, the officer executing the reinstated final order must photograph the alien and obtain a classifiable rolled print of the alien's right index finger on Form I-205. If a classifiable print of the right index finger cannot be obtained, a print of another finger may be used (annotation of such must be made as appropriate). The alien and the officer taking the print must sign in the spaces provided.

Once the final order has been executed, it is attached to a copy of the set of previously executed documents establishing the prior departure, exclusion, deportation, or removal. The officer executing the reinstated order must also serve the alien with a notice of penalties on Form I-294. The penalty period commences on the date the reinstated order is executed. Since the instant removal may be the alien's second (or subsequent) removal, the alien is subject to the 20-year bar; unless the alien is also an aggravated felon, in which case the lifetime bar applies. (Note that the alien being removed need not have been found deportable as an aggravated felon for the lifetime bar to apply, only to have been convicted of an aggravated felony.) The officer routes Form I-205 and a copy of Form I-294 to the A-file. A comparison of the photographs and fingerprints between the original I-205 and the second I-205 executed at the time of reinstatement may prove essential in the event the reinstatement order is questioned at a later date.

(f) Case Tracking Using the Deportable Alien Control System (DACS). As with all removal cases, the progress and completion of these cases must be documented

electronically by use of DACS. The basic instructions for entering, managing and closing cases in DACS, contained in the latest version of the DACS Manual, are valid, except for certain additional or revised codes. Use the final charge from the order that is being reinstated on the alien as the initial and final charge codes. Place these cases in CASE CAT=(2)H use DECISION CODE=(2)H to indicate that the previous final order has been reinstated and, once they are removed again, close the case using DEPART-CLEARED-STAT=(2)H (if the order being reinstated was an order of deportation or removal based on deportability) or (2)H (if the order being reinstated was an order of exclusion or removal based on inadmissibility).

(g) Authority. Aliens taken into custody pursuant to this section are detained as warrantless arrests in accordance with section 287.2 of the INA. No Warrant of Arrest (Form I-200) is required. Form I-200 is completed for detention pursuant to INA 236, rather than detention pursuant to INA 241. The previously executed Warrant of Removal, Form I-205, serves as authority to detain such aliens.

#### 14.9 Judicial Orders.

(a) General. Pursuant to section 238(c) of the Act, certain aliens may become subject to removal pursuant to a judicial order issued by a judge of a United States district court. Of note, it is relatively rare to encounter a case that involves such a judicial order. Several offices of the United States Attorney prefer not to seek such judicial orders, and instead prefer to rely upon the agency to utilize administrative forms of removal, such as reinstatement (for previously removed subjects) and administrative removal of aggravated felons.

(b) Authority. Authority for judicial orders is outlined in section 238(c)(1) of the Act.

(c) Procedure. The procedure for obtaining such judicial order is outlined in section 238(c)(2) of the Act. Of note, it is incumbent upon the appropriate United States Attorney of the particular district to initiate such action, with the concurrence of the Commissioner. With regard to the Deportable Alien Control System (DACS), the case category code (b)(2)High for a judicial order is 12. Officers must determine whether the alien is present in the United States or arriving, and utilize the appropriate case category codes. However, with the submenu of decision codes (DEC), the appropriate decision code for such an order is 2.

(d) Notice. In accordance with section 238(c)(3)(B), the Commissioner will provide written notice to the alien of the order of removal, and will designate the alien's country of choice for removal, and/or any alternate country, pursuant to section 241(b). The determination of country of removal may or may not be contained in the judicial order. If it is not explicitly stated in the order, the officer must make a determination. Based upon a review of the file, interviews with the alien, and other pertinent information (such as likelihood of removal, alien's ties to another country), the officer will make the effort to effect removal to the desired country. There are some cases, usually special interest cases,

wherein the alien will be removed to a country other than that of the alien's birth. The notice is accomplished by completing and serving Form I-294.

(e) Execution of Removal Order. Further processing and removal arrangements are conducted in the same manner as applies to Orders of Removal pursuant to proceedings conducted under relevant sections of the Act. For details regarding the removal process, refer to Chapters 15 and 16. In the case of aliens present in the United States, prepare and serve Forms I-205 and I-294. In the case of arriving aliens, Form I-296 should be used as appropriate. All documentation of the judicial proceedings, order, any appeals taken and decided, and government documents relating to the execution of the removal order must be made a part of the alien's A-file.

(f) Denial of Judicial Order. In any case in which a judicial order of removal was sought by the particular United States Attorney and subsequently denied, the authority and discretion of the Attorney General to institute removal proceedings pursuant to section 240 of the Act is not precluded, and proceedings may be initiated and pursued upon the same ground of deportability or removal or upon any other applicable ground of inadmissibility, deportability or removability provided under section 212(a) or section 237(a).

#### 14.10 Alien Terrorist Removal Procedures.

(a) General. The threat posed to the United States of America by terrorists has become increasingly apparent. Though grounds of removal have existed previously, as outlined in section 212 (a)(3)(B) and section 237 (a)(4)(B), emerging threats have resulted in the ongoing and continuing development of policies and procedures regarding the apprehension, detention and removal of alien terrorists. These necessitate that officers engaged in such cases make every effort to be apprised of and adhere to the most recent applicable policies and guidance. Cases involving known or suspected terrorists may also be referred to as 'special interest cases'. Additional information is available in the Special Agent' Field Manual Chapter 26 and Title V of the INA.

Some of these cases, due to national security concerns, may result in removal processing in accordance with Title V, sections 501 through 507 of the Act, referred to as Alien Terrorist Removal Procedures. Detailed definitions and procedures are outlined in those sections.

This subparagraph relates only to actions undertaken in the venue of the Alien Terrorist Removal Court of the United States. For cases outside of this scope, refer to Chapter 11.11 of this manual.

(b) Designation. Pursuant to the policy memorandum from Johnny N. Williams entitled Designation of National Security Matters dated December 12, 2002, Appendix 11-5, most cases will be readily identified upon coming to the attention of the Detention and Removal branch and the Deportation Officer. In the event that the officer encounters a case that appears to bear no obvious reference or annotation, the officer will take steps

outlined in the aforementioned memorandum to ensure that appropriate notices are made and that the case is appropriately designated. Of particular note is the requirement for the close coordination and inclusion of the Investigations branch, through the local Joint Anti-Terrorist Task Force (JTTF) representative. Non-Investigation elements may not independently initiate or conduct national security investigations or operations, without coordinating activity with their Investigations counterparts. Consultation and scrutiny may trigger special handling, custody considerations and other arrangements.

For cases not involving the Alien Terrorist Removal Court, refer to Chapter 11.11 Special Interest Cases. An example might include the detention and removal of a particular alien, shown or suspected by intelligence entities to have ties to terrorist activity, but being removed as an 'overstay' or status violator.

(b) Docket Control. Deportable Alien Control System (DACS). The case category for alien terrorist cases processed in accordance with INA Title V is 15. The decision code for a removal ordered by the Removal Court is 2. Officers must exercise discretion in providing case comments, so as to ensure that sufficient information is maintained in the electronic database, being careful not to include information that may exceed the system classification.

(c) Detention. Notwithstanding the provisions of section 241 regarding the detention of aliens, Subtitle B, Section 412 of the Patriot Act requires mandatory detention of terrorist aliens until they are removed, or until removal proceedings are terminated, if certain criteria are met and certifications made. Refer to sections 506 and 507 of the Act. Details regarding the apprehension, detention, and removal of aliens, generally, are outlined in 8 CFR Part 236 and 8 CFR 241.14.

(d) Inquiries. Any inquiries regarding terrorist or special interest cases should be generally received through official channels. Inquiries received outside of such channels are likely inappropriate, should not be entertained by the Deportation Officer, and should be immediately reported to the supervisor, for further reporting and action.

(e) Removal. Removal of terrorist and special interest cases is conducted in accordance with the instructions outlined in Chapter 15 and Chapter 16 of this manual. Pay particular attention to notification and escort procedures. The removal of such cases is likely to occur outside of the context of removals arranged and executed at the field office level, involving multiple agencies and several layers of leadership up to the headquarters level.

#### 14.11 Expedited Removal.

Refer to the Inspector's Field Manual, Chapter 17.15, for a discussion of the expedited removal process. While expedited removal is generally accomplished by Inspections, due to some delays, credible fear determinations, or travel document issues, there may arise some instances where the case becomes docketed with Detention and Removal. Further removal processing details are contained in Chapter 16 of this manual. Expedited

removal cases are annotated in DACS as either 8F (Expedited Removal), 8G (Credible Fear Referral), 8H (Status Claim Referral), or 8I (Absconder).

## **Chapter 15 Removal Process: Final Orders**

### 15.1 Detention after a Removal Hearing

### 15.2 Warrants of Removal

### 15.3 Execution of Warrant, Warning of Penalties for Reentry and Departure Verification

### 15.4 Surrender Regulation and Conditions [Reserved]

### 15.5 Case Closing Actions

References:

INA: 236, 240B, 241, 243, 274D

Regulations: 8 CFR Part 236, 1240.26, Part 241

Other: Travel Document Handbook, Appendix 16-1 and a Memorandum from General Counsel, Detention and Release of Aliens with Final Orders of Removal, Dated March 16, 2000, located in Appendix 15-1,

#### 15.1 Detention after a Removal Hearing.

(a) Detention During the 90-Day Removal Period. Pursuant to INA 241(a)(2), an alien is generally detained during the removal period which is defined at INA 241(a)(1)(B). Once an order against any alien becomes final as described in 8 CFR 241.1, he or she should generally be taken into custody for removal. The Office of the General Counsel and the Office of Immigration Litigation (see Detention and Release of Aliens with Final Orders of Removal, Memorandum Dated March 16, 2000, Appendix 15-1) have determined that detention under INA 241(a)(2) is mandatory only for criminals and terrorists during the removal period.

If the alien was previously released on an Order of Release on Recognizance, Form I-220A, cancel the order by completing the bottom section of the form. If the alien was released on bond, cancel the bond if the obligor complied with the conditions of the bond or breach it if the obligor did not comply. Under no circumstances during the removal period shall the Attorney General release an alien who has been found inadmissible under section 212 (a)(2) or 212(a)(3)(B) or deportable under section 237(a)(2) or 237(a)(4)(B). See INA 241(a)(2).

In general, the removal period is 90 days. The period does not run, however, during any time in which a removal order is judicially reviewed and a court orders a stay. See INA 241(a)(1)(B)(ii). The removal period is extended if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the aliens departure or conspires or acts to prevent the aliens removal subject to an order of removal. See INA 241(a)(1)(C).

(b) Detention Beyond the 90-day Removal Period. An alien ordered removed who is inadmissible under section 212, removable under section 237(a)(1)(C), 237(a)(2), or 237(a)(4) or who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period and, if released, shall be subject to the terms of supervision. See INA 241(a)(6), 8 CFR 241.4.

A non-criminal alien or an alien that is not removable under the sections mentioned above may be released for humanitarian reasons on an Order of Supervision. For guidance regarding the release of an alien on an Order of Recognizance prior to a final order, please refer to Chapter 11.

(c) Release on Order of Supervision after the 90-Day Removal Period. When the removal period has expired and a warrant of removal is outstanding, evaluate the case and consider the possibility of release on an order of supervision. All detained cases must be reviewed during the 90-day removal period to determine whether to release or detain the alien. For those whose repatriation is not practicable or immediate, such review must be conducted prior to the expiration of the 90-day removal period. The initial custody determination and any further custody determination concluded in the three month period immediately following the expiration of the 90-day removal period, will be made by the district director or the Director of the Detention and Removal Field Office having jurisdiction over the alien. See 8 CFR 241.4(c)(1). For any alien the district director or Director of the Detention and Removal Field Office refers for further review after the removal period, or any alien who has not been released or removed by the expiration of the three-month period after the review, all further custody determinations will be made by the Headquarters Post-Order Detention Unit (HQCDU). See 8 CFR 241.4(c)(2).

If the alien demonstrates to the satisfaction of an officer authorized by 8 CFR 241.5, that he or she:

Is not a threat to property or persons; and

Is likely to comply with the order of removal,

Serve an Order of Supervision, Form I-220B and addendum. The criteria for release for a post-order detention case can be found in 8 CFR 241.4. Information regarding post-order detention cases can also be found in Chapter 17.



When completing the I-220B, it is imperative that you provide the complete and correct name for the alien including all known names and correct A-file number. Indicate all of the conditions that pertain to the alien for release, including those listed on the addendum. In some cases, not all of the conditions will be practical or feasible.

One condition of the release is that the alien is to report to the Service on a regular schedule, the Deportation Officer shall make the Deportable Alien Control System (DACS) "Case Call-up" date coincide with the reporting date on the Form I-220B. This will serve as a compliance reminder to the officer of the alien's duty to report as ordered. Compliance with the reporting requirements of the Order must be noted on the continuation page/addendum of Form I-220B and in the "Case Comments" section of DACS each time the alien reports.

If at any time it is determined that the alien has failed to report as required or violated any other condition set, the district must take appropriate corrective action, which may include detention. If the alien has failed to appear, the case should be immediately referred to the Fugitive Operations team, if one exists within that jurisdiction. The Fugitive Operations Team shall prioritize the case based on the National Fugitive Operations policy (Chapter 19 of this manual) unless otherwise directed by the District Director. In the absence of a Fugitive Operations team, the District Director should utilize available resources within the district's enforcement divisions to locate the alien consistent with pertinent local and national priorities.

In addition, the District Director shall refer the case to the Law Enforcement Support Center (LESC) for immediate entry into NCIC. The LESC shall give the case priority consideration. In cases in which the alien has been located and detained, the District Director should re-determine conditions, if any, under which the alien will be released, including the setting of an appropriate bond.

Explain the conditions of release to the alien and ensure the alien acknowledges these conditions. The conditions may include the posting of bond to ensure that he or she reports as required as required under section 8 CFR 241.5(a).

Prior to releasing the alien, ensure that all of the items contained in the Out processing Checklist are completed. Copies of requested documentation should be forwarded to the Headquarter Post-Order Detention Unit for inclusion into their work files. An alien under an Order of Supervision may apply for employment authorization pursuant to the criteria set forth in 8 CFR 274a.12(c)(18), or may be granted employment authorization pursuant to 8 CFR 241.5(c).

Every released alien who is removable due to criminal or terrorist grounds is required to report at least once a month. Reporting will commence weekly, then monthly if no problems are encountered. In no circumstances, shall reporting be less than quarterly. Each time an alien reports, he or she must be questioned concerning compliance with the terms of his supervision. Evaluate each case at least once annually to determine if the alien is eligible for administrative relief or if deportation could or should be effected.

If evidence of a willful violation of the conditions of supervision is obtained from the statement or from a subsequent investigation, then present the case for prosecution in accordance with section 243(b) of the Act.

## 15.2 Warrants of Removal.

(a) Issuance. A Warrant of Removal on Form I-205 (Rev. 4/1/97) must be issued immediately when a final order of deportation or removal, as defined in 8 CFR 241.1, becomes effective. Although authority to issue a warrant of removal may be delegated within the office to subordinate officers, the warrant is always signed in the name of the district director, see 8 CFR 241.2. Responsibility for the costs of removal will be established based on section 241 of the Act and noted on Form I-205. On the warrant, cite the section of law under which the alien has been ordered removed and check the appropriate block to indicate the source of the order. Once a warrant is issued, it remains valid until executed or canceled.

(b) Cancellation of Warrant. There are a number of situations in which a warrant of removal may be canceled. When this action is taken, endorse Form I-205 CANCELED and prepare a memorandum to the file explaining the action taken and reasons for cancellation. Also include in the file any available documentation to support the determination. Reasons for cancellation may include:

(1) Reinstatement of Voluntary Departure. Authority to extend the time within which to depart is within the sole discretion of the district director. See 8 CFR 240.26(f). Voluntary departure may be reinstated in reopened removal proceedings only if the purpose of reopening was other than for voluntary departure. See 8 CFR 240.26(f). The total time for voluntary departure, including any extension, cannot exceed the authorized periods of 60 and 120 days as prescribed in INA 240B. Nunc pro tunc reinstatement of voluntary departure is not authorized in the case of any alien subject to removal proceedings, or deportation proceedings in which the warnings for failure to appear were given.

(2) Motion to Reopen. If a motion to reopen or reconsider is granted vacating the final order of removal and the Government does not appeal the ruling.

(3) Enactment of Legislation. Legislation which will void the final order of removal may be enacted by Congress and signed by the President, e.g.,

A private bill introduced on behalf of an individual or group may grant resident status or citizenship to an alien or aliens who have been ordered removed.

Public laws amending the Act which render the final order of removal moot. For example, the comprehensive Immigration Reform and Control Act of 1986 (IRCA), Public Law 99-603, amended the INA to grant legalization of status to aliens who met certain criteria without regard to the fact that a warrant of deportation had been issued.

(4) Court Action. A court ruling voids the final order of removal. For example, a finding by a United States District Court that an individual who has been ordered removed is, in fact, a United States Citizen.

(c) Placing Warrants of Removal in the National Crime Information Center (NCIC) Lookout System. All information regarding this can be found in Appendix 19.2, Absconder Apprehension Initiative Standard Operating Procedures.

### 15.3 Execution of Warrant, Warning of Penalties for Reentry, and Departure Verification.

(a) Warning of Penalties for Entry, Attempted Entry, or Being Found in the United States after Being Deported or Removed. Prior to execution of the warrant of removal, an alien being removed must be notified of the administrative sanctions and criminal penalties involved if the alien enters, attempts to enter or is found in the United States without having obtained permission to reapply for admission. The immigration officer preparing the warning on Form I-294 must check the appropriate series of boxes that apply in the alien's particular case. The alien must be served with a copy of the warning and a copy is retained for the A file.

(b) Execution. At the time of the alien's physical removal, the officer effecting the removal must complete the reverse side of Form I-205. The officer must fill in the information relating to the alien and obtain a classifiable rolled print of the alien's right index finger on the reverse of the warrant. If a classifiable print of the right index finger cannot be obtained, a print of another finger may be used and must be identified. The alien and the officer taking the print must sign in the spaces provided. This block may be completed by either an agency employee or contract guard, whoever is responsible for escorting the alien out of the United States.

### 15.4 Surrender Regulation and Conditions. [Reserved]

### 15.5 Case Closing Actions.

(a) Lookout Notices. Once the warrant of removal has been executed, the case must be closed in the Deportable Alien Control System (DACS). Refer to the DACS Users Manual for the proper (b)(2)High. An interface between DACS and the (b)(2)High, (b)(7)e

(b) Entry of Case into the Deported Felon File (DFF). [Reserved]

(c) Notification of Final Disposition. Report the final disposition of each case to the Identification Division, FBI. If the final disposition is not available when the fingerprint card is originally submitted, prepare and forward FBI Form R-84 once the case is closed. A notification must be prepared after receipt of verification of departure or endorsed warrant of removal. This notification is the responsibility of the district holding the file,

even though the alien may have departed or been deported through a district other than the district of origin. When the FBI number is unknown, furnish date of birth, sex, and fingerprint classification if known, as quoted by the FBI on Form 1-A. Final disposition must be shown as one of the following:

Deported,

Deported voluntarily,

Status adjusted to lawful permanent resident,

Notice to Appear canceled,

Proceedings terminated by IJ (BIA),

Alienage not established,

Released as U.S. citizen (lawful resident alien), or

Alien died.

In each instance, add the date of occurrence immediately following the disposition. If the alien was deported or departed voluntarily to Mexico, add after the date, in appropriate cases:

Via airlift to Mexico, or

Deported voluntarily. "Deported voluntarily" includes the case of an alien who departed from the United States before the expiration of the voluntary departure time granted in connection with an alternate order of removal.

Additional instructions regarding the FBI Form R-84 can be found in the Special Agents Field Manual, [Appendix 16-1](#).

## **Chapter 16 Removal Process: Preparations for Travel Within 90 Days of Final Order**

16.1 Obtaining Travel Documents

16.2 Liaison with Foreign Consular Officials

16.3 Making Travel Arrangements

16.4 Escort Details (General)

16.5 Overseas Details

16.6 Notification Process

16.7 Carrier Liaison, Liability and Notification

16.8 Prisoner Treaty Transfers

16.9 Group Removal

16.10 Justice Prisoner Alien Transportation System (JPATS) [Reserved]

16.11 Removals by Special Charter Aircraft

References

INA: 241

Regulations: 8 CFR 241 and 236.1(e)

Other: U.S. Public Health Service Manual and Bureau of Prisons Program Statements.

16.1 Obtaining Travel Documents.

(a) General. With certain exceptions, you must secure travel documents before removing an alien from the United States. Therefore, apply for travel documents immediately after issuing the Notice to Appear to any alien:

detained at government expense;

whose release from a penal institution is imminent; or

otherwise deemed high priority.

In other cases, apply for travel documents immediately after the warrant of removal has been issued.

The travel-document processing time differs from one consular office to another, so you should make it a rule to make contact early to schedule personal or telephonic interviews to determine nationality.

To obtain travel documents for aliens under a final order of removal contact the consulate having jurisdiction over your office. For individual country requirements, see the Travel Document Handbook (Appendix 16-1). To expedite the issuance of travel documents, establish a good working relationship with consulate staff. If the process of obtaining a

travel document becomes extremely difficult, or reaches an impasse contact the Headquarters Office of Detention and Removal.

Follow the instructions below when requesting travel documents:

Once an order becomes final, schedule a personal interview with the alien to obtain information pertinent to Form I-217, Information for Travel Document or Passport. Form I-217 is the source document for most of the information used in travel document requests. Therefore, use all available resources to complete accurately all fields on the I-217 before submitting the request.

Within two weeks of the alien receiving his/her final order, make your travel document request. Include the charging document, final order, I-205, I-294 or I-296. Redact any reference to asylum and withholding of removal. The number of photographs varies depending on embassy/consular office; but always enclose at least four. In cases involving criminal aliens, include a copy of the conviction document for the criminal charge on the basis of which the alien was ordered removed.

To prepare a request for travel documents, consult as many sources as you need to verify the aliens identity. Talk with the alien and, if applicable, family members. Check their files. Check the Non-Immigrant Information System (NIIS) for entry information and passport number. If still in doubt, contact the International Criminal Police Organization, INTERPOL (for general information, visit the INTERPOL website at (b)(2)High to request assistance from INTERPOL, see contact information at Appendix 1-1). Send copies of identity-related search results include copies of the material previously presented to the consul, the I-217, the I-213, the immigration judge's order, fingerprints, and any other identifying documentation that will assist in establishing the nationality of the alien.

Within one week of submitting the request, follow-up with the consulate. Make sure the consular staff needs nothing more from you to process the request. That done, call for a status report at least every 30 days until the document is issued or the case is closed. In the aliens A-file, record every attempt to convince the consulate to issue the travel document. This record could be used in court.

If you have not received the travel document within 75 days of submitting the request, forward a copy of all material in the original request package to HQDROs Removal Support and Coordination Branch (see Appendix 1-1). Send the complete package, accompanied by a cover letter briefly summarizing the record to date, via express delivery service. HQDRO will send you an email confirming receipt of the packet. Failure to duplicate the request package exactly as submitted to the consulate will cause HQDRO to send the package back to you. Note: Involving HQDRO in the effort to secure travel documents does not relieve you of responsibility. Continue to press for issuance of the travel document from the consulate and any other possible source, such as family or Interpol. Include the following documents with your request:

1. A summary of the facts, including the deportation charges;
2. Form I-217, Information for Travel Document or Passport;
3. Any available birth, baptismal, or foreign military record;
4. Signed photograph;
5. Copy of any travel document;
6. Copy of the warrant of removal; and
7. Copy of letter refusing issuance of travel document for removal or copies of correspondence if there is undue delay.

Advise any alien who does not, in timely fashion, apply for a travel document is subject to prosecution under 8 USC 1253(a).

An alien who is not an arriving alien and who has been ordered removed may, with certain restrictions, request removal to a country other than his/her country of origin (see Section 241(b) of the Act). For any country other than Canada, complete and forward Form I-241, Request for Acceptance of Alien, to the consulate of the country designated. Do this even if the designated country is unlikely to grant the request. At the same time, however, apply for travel documents from the consulate of the country to which the alien will likely be removed if refused by the designated country. If the country designated by the alien refuses the request or fails to respond within 30 days, disregard the designation and follow standard procedures for removal.

Do not return the passport of an alien whose departure is being enforced. The passport is the property of the issuing government and not the alien. If, however, administrative relief is pending and no final order has been entered or the final order has been entered but enforced departure is not contemplated, you may return the passport.

(b) Removals to Canada.

(1) General. The Reciprocal Arrangement for the Exchange of Deportees between the United States and Canada prescribes procedures for submitting aliens' requests for removal to Canada (see Appendix 16-2), as follows: Prepare the I-217 and Form I-270, Request for Consent to Return Person to Canada. Form I-270 is incomplete without I-270A, Notification of Intended Removal, which covers removals and voluntary departures under safeguard to Canada, and non-citizens transiting Canada. Submit Form I-270 and I-270A in all cases, even for aliens who appear ineligible under the reciprocal arrangement. Send the forms to the Immigration and Customs Enforcement (ICE) Liaison Officer in Ottawa, who will transmit the request to the appropriate Canadian official and do everything possible to expedite a decision. Note: You must obtain consent through the ICE Liaison Office before you can effect the removal or return.

You must notify the ICE Liaison Officer in Ottawa if, after Canada has granted a removal request, you do not effect the removal of the alien named in the request. You may not use the same letter of consent on a subsequent occasion involving this alien without first obtaining the ICE liaison officer's consent.

For a deportee to Canada requesting subsistence and transportation to a place other than the closest Canadian port, you must complete the reverse side of the I-270.

(2) Third country removals or returns. Advise the Headquarters' Office of Detention and Removal (DRO), on all Canadian citizens or permanent residents being removed from the United States to a third country (see Appendix 1-1). Headquarters DRO will advise the Assistant Secretary of State for Consular Affairs at the Department of State. The Assistant Secretary of State for Consular Affairs at the Department of State will notify the Canadian Director General of the Consular Affairs Bureau of the Department of Foreign Affairs and International Trade of any intended removal to a third country (see Appendix 16-5, Exchange of Letters Between the United States and Canada on the Removal of their Nationals to Third Countries).

(3) Canadian military. When the alien is a member of the Canadian Armed Forces, send a copy of the request to the Military Attach, c/o Embassy of Canada. (See Appendix 1-1 for the address.)

(4) Other assistance from liaison office in Ottawa. The ICE Liaison Officer may be able to obtain information from centralized Canadian records to help identify and obtain travel documents, e.g., for a crew member of any nationality who deserted in Canada.

(5) Safe Third Removals. The Agreement Between the Government of the United States of America and the Government of Canada for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries (Safe Third Agreement, Safe Third, the Agreement), which has been in effect since December 29, 2004, establishes procedures for processing the claims of certain asylum seekers.

Under the Safe Third Agreement, you will return to Canada a third-country national (not from Canada or the United States) seeking entry from a Canadian land port of entry or transiting the United States while being removed from Canada. Immediately notify Canada if a transiting alien makes an asylum claim. Article 5 of the Safe Third Agreement provides that the United States will return that alien to Canada, where the Canadian refugee status determination system will decide the case.

Any alien ordered removed after having entered the United States from Canada is removable to Canada in accordance with the United States/Canada Reciprocal Arrangement for the Exchange of Deportees (see Appendix 16-2, Section III. Consent to Return Aliens). You must effect the removal as soon as possible and in no case later than one year from the date of the final order of removal. Advise Canada of the removal on Form I-270A, Notification of Intended Removal.



If an arriving alien is out of status or without proper documents, the alien is subject to Expedited Removal under section 235(b) of the Immigration and Nationality Act. If the alien expresses fear of returning to his/her country of origin, refer him/her to an asylum officer for a Threshold Screening Interview.

If the alien qualifies for an exception under the Safe Third Agreement, the asylum officer will conduct a Credible Fear Interview to determine whether the alien would likely face persecution or torture if repatriated. If the alien does not qualify for an exception, remove him/her under the Expedited Removal Order. For a list of exceptions to the Safe Third Agreement, see Chapter 17.11(b) of the Inspector's Field Manual.

When the alien is an unaccompanied minor, initiate section 240 proceedings before an Immigration Judge (see Chapter 17.11(d)(6) of the Inspector's Field Manual). Likewise, initiate section 240 proceedings for Cubans at land ports of entry on the Canadian border (see Customs and Border Protection memorandum, Treatment of Cuban Asylum Seekers at Land Border Ports of Entry, Appendix 16-6).

Upon finding credible fear, the asylum officer will issue and serve the I-862, Notice to Appear. If the asylum officer finds no significant possibility of persecution or torture, i.e., credible fear, he/she will complete and issue the I-860, Notice and Order of Expedited Removal. If at that time the alien requests a review by the Immigration Judge, the asylum officer will issue and serve the I-869, Record of Negative Credible Fear Finding and Request for Review by Immigration Judge, and will issue and serve I-863, Notice of Referral to Immigration Judge. For an in-depth explanation of the credible fear process, see Credible Fear Process in the Asylum Officer's Field Manual.

Aliens who leave the United States for Canada under an order of voluntary departure and are subsequently returned to the United States are considered not to have departed the United States, per General Counsel Opinion, 89-17.

Arriving visa waivers are not subject to Expedited Removal nor can they be placed in section 240 removal proceedings. However, if visa waivers arrive from a Canadian land port of entry, claim a fear of persecution, and do not qualify for an exception under the Safe Third Agreement, return them to Canada (see Chapter 17.11(d)(8) of the Inspector's Field Manual).

(6) Notification Process. Use Form I-270A to notify the U.S. Embassy in Ottawa five business days before removing or returning any alien to Canada. At the top of the form indicate the type of removal or return by checking the appropriate box. Fill in all biographical information, including current immigration status; most serious criminal conviction; and physical or mental health issues, if any. Enter complete travel itinerary. Provide your name and contact information. Fax Form I-270A to the U.S. Embassy, Ottawa, Canada. The telephone and fax number are on the form. Document the "A" file with the completed I-270A and your fax transmittal. In addition, call Ottawa to confirm receipt of your fax. Do not remove or return the alien without first receiving approval from Ottawa.

An alien not admitted to Canada or the United States at the port of entry but directed to return for a scheduled interview regarding an asylum claim is called a "Direct Back." In the United States, we generally detain arriving aliens making a claim of asylum. Canada does not. (For more on Canada's policy, see "Canada's Refugee Protection System" at

(b)(2)High

The United States can remove a direct back if the alien has an outstanding order of removal. However, because Canada may want to admit the individual, you must notify the Supervisor of the Refugee Processing Unit at the Canadian Port of Entry at Fort Erie of our intent to remove a Direct Back five business days before effecting that removal. (See [Appendix 1-1](#) for contact information.)

(c) Transfer of Deportees.

(1) General. Do not transfer an alien to a port for deportation until advised that transportation arrangements have been made including, if required, arrangements for custodial care in transit and at final destination. Prepare and send [Form I-216](#), Record of Person and Property Transferred, with each deportee. If the deportee has a serious mental or physical problem that could affect his/her travel, attach [Form I-141](#), Medical Certificate, together with a clinical history, to the [I-216](#). When transferring an unescorted deportee, enclose all documents accompanying the alien in a document envelope, Form I-164.

(2) Deportation through Canada. When placing an unescorted deportee aboard a carrier that will stop in Canada en route to a third country, send advance notification to the authorities at the first Canadian port. If the first Canadian port is unknown, immediately advise the immigration liaison officer in Ottawa, who will follow through with the appropriate Canadian officials.

(d) Advance Notification of Criminal Alien Removals and All Escorted Alien Removals.

(1) Request for Travel. Submit a travel request by completing one of the online request forms provided at the Omega website [\(b\)\(2\)High](#). Choose the Travel Request Form appropriate for your removal operation:

Escorted

Unescorted

Escorted After Hours

Unescorted After Hours

Escorted Juvenile

HQ DRO Authorized Special Training

Escorted Juvenile After Hours

Charter Mission Commercial Travel Support

The Omega site also includes travel-related forms. Retrieve them individually by clicking on the applicable link:

Diplomat and Consular Travel Support

Airlines Expense/Visa Waivers Form

Cancellation Form

Change Form

Question and Comments Form.

If you encounter difficulties with the direct links, follow these steps:

- a. Go to www.owt.net.
- b. Click on the Government Services tab at the top of the page.
- c. Under Web Pages select Detention and Removals.
- d. Select the appropriate form under Reservation Request Forms.

For quick access, bookmark Omega's home page www.owt.net or DRO-specific page (b)(2)High under Internet "Favorites."

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## 16.2 Liaison with Foreign Consular Officials.

(a) **Obtaining Travel Documents.** Ultimately, you must rely on foreign consular officials when a deportable alien lacks the necessary travel document to enter a foreign country. Cordial relations with consular officials are extremely important in reducing the time necessary to procure a travel document. Many foreign consulates have their own forms, which must be completed before a travel document will be issued. The Travel Document Handbook, compiled by HQDRO Removals, consists of a country-by-country listing of these requirements as well as sample fillable forms required by many foreign countries. Expired travel documents or other official identification may facilitate the foreign consuls efforts to secure a new travel document. For this reason, whenever possible, save any such documentation in the A file.

(b) Reporting Problems with Consulates. Section 243(d) of the Act, as revised by Pub. L. 104-208, provides another option, formally notifying the Department of State, when a foreign country refuses to accept, or unduly delays acceptance, of its nationals found to be deportable from the United States. Although cooperation is always preferred to conflict and sanctions, the Secretary of State may suspend immigrant and nonimmigrant visa issuance in cases where immigration officials and foreign consular officials cannot reach agreement. If you become involved in such an impasse, report the situation to HQDRO Removals for follow-up action. Include the date and time of every attempt to obtain travel documents, the names of consular officials involved, names of aliens affected, and other relevant details.

The State Departments website provides current addresses for consular offices in the United States; see <http://www.state.gov/s/cpr/rls/fco/>.

### 16.3 Making Travel Arrangements.

(b)(2)High, (b)(7)e

(b)(2)High.

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#### 16.4 Escort Details (General).

(a) Introduction. Escort duty involves transferring or escorting aliens between immigration and other custodial facilities, to and from airports, railroad and bus depots, hospitals, courts, consular offices, aliens residences, places of employment, and so forth. A single officer or a group of officers working together may perform escort duty.

(b)(2)High, (b)(7)e

(b)(2)High, (b)(7)e



(b)(2)High, (b)(7)e

(b)(2)High

(c) Special Handling Cases.

(1) Mental Instability. Aliens with mental disorders require special care and attention. Some have suicidal or homicidal tendencies and may attempt injury to themselves or to others. Unless the aliens file records signs of mental instability, however, you may not receive advance notice of these cases. If the alien seems unusually nervous, excitable, despondent, or otherwise irrational, inform a supervisor immediately.

Notify the receiving officer or institution before delivering an alien with known or suspected mental illness. In transit, attempt to put the alien at ease by maintaining a calm, reassuring demeanor.

(b)(2)High, (b)(7)e

16.5 Overseas Details.

(a) General. Overseas assignments tend to involve aliens with criminal records, mental illness, or physical disabilities. These require particular caution and considerable advance planning. You may expect transportation problems, difficulties with foreign officials, and other complications. To minimize problems, choose non-stop flights. If unavailable, choose the schedule with the fewest connections.

(b) Consular Notification. Before traveling, provide the immigration officer in charge or the consulate of the country involved with the necessary details about the alien(s) and the escort.

(c) Travel Preparations.

(1) Vaccination and Inoculations. Certain countries require travelers to carry smallpox vaccination certificates. Countries in Asia, the South Pacific, Africa, and the Middle East may require proof of inoculation for other diseases, e.g., cholera, yellow fever, and typhoid. Check with consular representatives before traveling.

(2) Travel Authorization. A signed Form G-250, Travel Request Authorization, confirms the necessary funds are available for food, lodging, transportation and related expenses incurred during escort duty. Do not travel before obtaining this authorization. Upon returning from the authorized travel, promptly submit a travel voucher (Form SF-1012) for reimbursement. A notebook of expenses, including dates, times and reasons, can prove useful when itemizing costs.

#### 16.6 Notification Process.

For instructions on the removal-notification process, see

(b)(2)High

#### 16.7 Carrier Liaison, Liability, and Notification.

(a) General. When an alien is deportable at the expense of a transportation line, it should be served immediately with Form I-288. If the transportation line responds and indicates that it will furnish transportation, provide a notice on Form I-288 when the alien is completely ready for deportation. If personal care and attendance is required, supplement the notice accordingly and provide the carrier with information that the expense incident to employing a suitable person to accompany the alien to his final destination will be defrayed in the same manner as the expense of his or her deportation. Use Form I-380, Record of Expenses Billable to Transportation Company, to maintain an accurate record of all expenses incurred which are billable to the carrier.

(b) Procedures When Carrier Refuses Liability. A report is required in cases when a transportation company refuses to pay the deportation expenses of an alien brought to the United States by that company, and the costs are borne by the government. In such cases, submit the required report to the Debt Management Center (DMC) in Burlington, VT. DMC will create and forward a bill to the debtor company. If the company refuses to pay, DMC will refer the case to Regional Counsel, Burlington, who will take appropriate action to collect the debt.

The report must provide the following information:

Name of alien;

Name of vessel and country of registry;

Date, place, and manner of arrival;

Name and address of owner(s) of the vessel, and the names and addresses of any agents, charters, or other interested persons;

Date, place, and manner of removal;

The charge warranting the removal order;

Expenses incident to removal;

Details of demand for payment, including how delivered (personally served or by first-class, certified, or registered mail) and to whom (if not the vessels owner(s), cite the source of the agent's authority);

The reason for refusal of payment. Indicate whether the debtor offered to pay for any part of the expenses; and

Point of contact for technical questions (e.g., the person who determined the carriers liability).

#### 16.8 Prisoner Treaty Transfers.

(a) General. The International Treaty Transfer Program permits the transfer of prisoners from the country where convicted to the country of origin. (For more information on the International Treaty Transfer Program, see (b)(2)High and (b)(2)High)

(b) ICE involvement and responsibilities. When the U.S. Department of Justices Office of Enforcement Operations, which administers the International Treaty Transfer Program, notifies ICE of an impending transfer, HQDRO Removals staff then coordinates the removal process with the other entities involved in the transfer (prisons, Institutional Removal Program, etc.).

#### 16.9 Group Removal.

(a) General. The escort detail for a large group of aliens includes at least two officers, of whom one is designated supervisor. A group may travel by bus, train, Justice Prisoner and Alien Transportation System (JPATS) or commercial aircraft. (See the Transportation Detention Standard (Land Transportation) in [Appendix 23-1](#) and Enforcement Standards on Use of Restraints and Escorts in [Appendix 16-4](#).)

Before departure, make sure you have enough money for meals and other expenses, and confirm that the necessary arrangements for food and transportation have been made.

Because unforeseen expenses often arise, have your government credit card with you when you travel.

Verify that the Form I-216, Record of Persons and Property Transferred, lists every person in the group. Confirm that all baggage is properly packed and tagged. Encourage everyone in the group to dress appropriately for the climate of the receiving country.

(b) Property and Baggage. Verify that every aliens property envelope includes the following: a copy of Form I-43 that lists all baggage and personal effects; the warrant of removal or other documentation of removal or voluntary departure; and medical certificates as required.

(c) Commercial Travel. When traveling by bus or train, familiarize yourself with all entrances, exits, and compartments. Do not allow detainees to open windows while en route. Allow detainees to walk up and down the aisle only when necessary. When traveling on commercial aircraft, pre-board. Remain seated during stopovers.

(d) Problem Cases. At least one officer must sit beside anyone expected to try to escape. When resorting to handcuffs, do not cuff the alien to the carrier.

(e) Escapes. Exercise judgment in deciding whether to pursue an escapee. Consider such factors as the number of escort officers, group size, location, the likelihood of success, and whether pursuit could jeopardize the security and accountability of the other detainees or endanger the general public.

For procedures on reporting an escape, see Reporting Assaults, Escapes and Other Incidents in Chapter 44.1.

16.10 Justice Prisoner Alien Transportation System (JPATS) [Reserved].

16.11 Removals by Special Charter Aircraft

## **Chapter 17 Removal Process: Post Order Custody Reviews (POCR)**

17.1 Post Order Custody Regulation

17.2 Final Order Definition

17.3 Removal Period

17.4 Field Procedures

17.5 Other Factors for Consideration During Post Order Custody Review

- 17.6 Penalties for Failure to Cooperate in Obtaining A Travel Document
- 17.7 Likelihood of Removal
- 17.8 Possible Decisions of Deciding Officials At Field Level
- 17.9 Serving Notice of Final Decision
- 17.10 Postponement of Review
- 17.11 Headquarters Post Order Detention Unit
- 17.12 Orders of Supervision
- 17.13 Future Reviews
- 17.14 Sanctions Against Countries That Fail to Issue Travel Documents
- 17.15 Failure to Cooperate

References:

INA: Sections 212, 241

Regulations: 8 CFR Part 241

Other: HQCDU Intranet Web Site; Federal Register notices: Continued Detention of Aliens Subject to Final Orders of Removal, 66 FR 56967 (November 14, 2001) and Notice of Memorandum, 66 FR 38433 (July 24, 2001).

17.1 Post Order Custody Regulation.

(a) History. As a result of the Supreme Courts decision in Zadvydas v. Davis, 533 U.S. 678 (2001), Headquarters Removal Operations Division has established procedures for the review of all final order cases in custody. This decision limits the Services ability to continue to detain aliens beyond 90 days after the issuance of a final order of removal. In general, the Supreme Court ruled that an alien can no longer be kept in detention (unless special circumstances as defined in 8 CFR 241.14 exist), once it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future. This decision applies to aliens admitted into the United States as refugees and those who entered without inspection, but does not apply to aliens paroled under section 212(d)(5) of the Immigration and Nationality Act (Act), arriving aliens, or Mariel Cubans.

(b) Overview. Post Order Custody Reviews (POCRs) will be conducted on aliens who are detained in Service custody to ensure that their detention is justified and that it is in compliance with governing laws and regulations. In particular, the instructions under

Field Procedures in section 17.4 of this manual are to be applied to all aliens in custody with a final order. When conducting POCRs, two key issues are to be considered:

Availability of a travel document and significant likelihood of removing the alien in the reasonably foreseeable future (pursuant to 8 CFR 241.13); and

Threat to the public or flight risk (pursuant to 8 CFR 241.4).

In general, field offices conduct POCRs within the 90-day removal period as defined by section 241(a) of the Act. They generally retain custody jurisdiction under 8 CFR 241.4 and continue efforts to remove the alien until the 180-day point (90 days beyond the expiration of the removal period) for all cases. Certain cases, where the alien is considered a threat to the public or a flight risk and whose removal is not likely, may be referred to the Headquarters Post-order Detention Unit (HQCDU) following the 90 day review. After day 180, custody jurisdiction for all cases transfers to HQCDU. Once HQCDU takes jurisdiction over a case, it will generally make a custody determination based on the feasibility of removal in the reasonably foreseeable future pursuant to 8 CFR 241.13.

## 17.2 Final Order Definition.

The definition of a final order can be found in 8 CFR 241.1. Authority to issue removal orders lies with an immigration judge, the Board of Immigration Appeals, a federal court judge, or any authorized Service official. An order of removal becomes final:

Upon dismissal of an appeal by the Board of Immigration Appeals (Board);

Upon waiver of appeal by the respondent;

Upon expiration of the time allotted for an appeal if the respondent does not file an appeal within that time;

If certified to the Board or Attorney General, upon the date of the subsequent decision ordering removal;

If an immigration judge orders an alien removed in the alien's absence, immediately upon entry of such order; or

If an immigration judge issues an alternate order of removal in connection with a grant of voluntary departure, upon overstay of the voluntary departure period except where the respondent has filed a timely appeal with the Board. In such a case, the order becomes final upon an order of removal by the Board or the Attorney General, or upon overstay of any voluntary departure period granted or reinstated by the Board or the Attorney General.

## 17.3 Removal Period.

(a) **Removal Period Defined.** Section 241(a)(1) of the Act contains the definition of the removal period. Except as otherwise provided in that section, when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days (in this section referred to as the removal period). During this 90-day period, the Attorney General shall detain the alien. The removal period begins on the latest of the following:

The date the order of removal becomes administratively final;

If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the courts final order; or

If the alien is detained or confined (except under an immigration process), the date the alien is released from such detention or confinement.

The 90-day removal period refers to the initial period of 90 days that an alien is in INS custody subsequent to the issuance of a final order of removal.

(b) **Reasonable Time to Effect Removal.** As indicated above, the removal period is defined to be a 90-day period. However, the Supreme Court ruled in Zadvydas that detention of an alien ordered removed is presumptively reasonable for a six-month period in order to effectuate removal. Further, the Court held that this does not mean that the alien must automatically be released after the six-month period. Rather, the Court held that an alien may be held in confinement past the six-month period, if the government has made a determination that there is a significant likelihood of removal in the reasonably foreseeable future. In addition, the Court found that there may be special circumstances requiring the aliens continued detention, as outlined in 8 CFR 241.14.

The Court held that the period of time which can be considered as the reasonably foreseeable future, becomes increasingly shorter as the length of time the alien has been held in post-order INS detention increases. See Zadvydas, 533 U.S. at 701. In other words, the longer an alien remains in INS custody after being ordered removed, the higher the burden on the government to establish that the aliens removal is going to occur in the reasonably foreseeable future.

(c) **Suspension of Removal Period.** The removal period shall be extended and the alien may remain in detention during such extended period if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to facilitate the aliens departure or conspires or acts to prevent the aliens removal. This includes any failure or refusal on the part of the alien to provide information or to take any other action necessary to obtain a travel document [See INA 241(a)(1)(C) of the Act]. Prior to the government suspending the removal period, the alien must have:

Been served with a notice of what he/she is required to do [See the form, Instruction Sheet to Detainee];



Been given the opportunity to comply; and

Subsequently failed to comply.

(d) Deciding Official. The deciding official is responsible for making the final decision whether to continue detention of an alien. At the field level, the deciding official is the District Director. At the headquarters level, the Director of the Post Order Detention Unit is the deciding official.

#### 17.4 Field Procedures.

These procedures apply to all detained aliens except Mariel Cubans whose parole is governed by 8 CFR 212.12.

(a) Travel Documents. Field offices will work to obtain a travel document for all aliens in custody with a final order. For countries where history shows that obtaining a travel document takes longer than 30 days, requests for assistance must be forwarded to the HQ Travel Document Liaison Unit at the same time as a request is sent to the local consulate. For all cases, the field should immediately forward a timely request for assistance to HQ Travel Document Liaison Unit upon determination that a problem exists in obtaining a document within the statutory removal period. The Information for Travel Document or Passport, Form I-217, is to be filled out accurately and completely, following an interview with the alien. The field office is responsible for making the appropriate follow up with the HQ Travel Document Unit regarding the status of the travel document and in making the appropriate annotations in the A-file and in DACS.

(b) Warning for Failure to Depart, Form I-229(a). Every alien in custody shall be served an I-229(a) and Instruction Sheet to Detainee. These forms can be obtained from the Intranet at:

(b)(2)High

(b)(2)High . The forms must be served no later than 30 days after receipt of a final order. The alien must be served either via personal service or certified mail, return receipt. The Instruction Sheet to Detainee gives the alien notice of what he or she is required to do in order to assist in the removal process and gives the alien the opportunity to comply with the request.

(c) Notice of Review (File or Interview). Every alien in custody must be served a Notice of Review (File or Interview, at the discretion of the deciding official) no later than 60 days after issuance of a final order (even on cases that the removal period has not yet begun or has been suspended). This notice will provide instructions to the alien on evidence or documentation that may be submitted by the alien for consideration during the file review. If the alien or his or her representative requests additional time to prepare materials beyond the time when the deciding official expects to conduct the records review, such a request will constitute a waiver of the requirement that the review occur prior to the expiration of the removal period. The deciding official must determine if the

review will be based solely on a file review or if it will include a telephonic, video teleconference, or personal interview.

(d) POCR Review (File or Interview). For every alien in custody with a final order, a POCR Worksheet package shall be completed, pursuant to criteria and factors found in 8 CFR 241.4 (threat/flight risk) no later than 90 days after the issuance of a final order (if in custody when final order issued) or no later than 90 days after coming into custody with an outstanding final order. The package will be forwarded expeditiously to the deciding official for review and signature. A POCR is not to be completed without the aliens A-file. If, under extenuating circumstances, an A-file is not obtainable and a temporary file has to be created, the temporary file is to have copies of all immigration history documents, as well as other pertinent supporting documentation, investigative reports, and other pertinent memoranda, before a review is done.

#### 17.5 Other Factors for Consideration During Post Order Custody Review.

(a) Stays of Removal.

(1) Stay of Removal issued by a federal court. This issue is being reviewed by Office of General Counsel and HQDRO. An agency position is in the process of being developed.

(2) Stay of Removal Issued by Immigration Judge or Board of Immigration Appeals (BIA). Follow the procedures under Stay of Removal issued by a federal court.

(3) Stay Issued by District Director. The POCR process will continue as normal. The field will conduct a 90-day review and at day 180, the case will transfer to HQCDU. At day 181, HQCDU will review the case and the stay issued at the field level for determination of continuation of custody and/or the stay.

(4) Service and Court Agreement Stays. For the purposes of removal and the POCR process, if a formal, written stay has not been issued, no stay exists and the alien can be removed at anytime, unless otherwise advised by General Counsels Office, Office of Immigration Litigation, or the United States Attorneys Office. The POCR process will proceed through the normal process.

(b) Field Responsibility. The field will complete an informal review every 30 days to ensure that the stay is still in place, and update DACS as appropriate. Further instructions will follow once stay issue has been resolved.

#### 17.6 Penalties for Failure to Cooperate in Obtaining a Travel Document.

(a) Refusing to Make a Timely Application for a Travel Document. If an alien refuses to make timely application (separate and apart from the Services efforts) for travel documents or conspires or acts to conspire to prevent his removal, the aliens removal period is to be extended. A POCR Worksheet package is to be completed and the Notice of Failure to Comply, is to be served on the alien advising him of the reason for the

extension of the removal period and the actions needed to restart the removal period. The Notice of Failure to Comply must state the specific request that the alien failed to comply with, as stated on the Instruction Sheet to Detainee. The alien shall be considered for criminal prosecution.

Until the alien has come into compliance, the case will remain under field jurisdiction. The field will complete an informal review every 30 days to determine if the alien has come into compliance with the requirement, and update DACS as appropriate. The field will conduct formal reviews in accordance with POOCR procedures.

Once the alien has come into compliance with the requirement to assist with removal, the field must document the A-file and conduct a new POOCR Worksheet package based on the change in circumstances. If the alien is continued in detention after the new review, the field will retain jurisdiction for 90 days after the decision before referring the case to HQCDU.

Just because an alien does not submit an application for a travel document on his or her own does not necessarily mean that the alien is refusing to cooperate. Some examples of refusal to cooperate may be:

- Refusal to fill out an application for a travel document;
- Refusal to provide information requested by a foreign consulate;
- Providing false or inaccurate biographical information;
- Failure to assist the Service in obtaining a travel document; or
- Acts deliberately committed to prevent his or her removal; etc.

Although such a conclusion might be warranted in a particular case, the totality of the circumstances must be weighed before a final determination is made.

(b) Criminal Prosecutions. Aliens who fail to comply with the requirement to assist the Service with obtaining a travel document should be referred to the United States Attorneys Office for criminal prosecution under Section 243(a) of the Act, 8 U.S.C. 1253(a). A current record of the referrals, which were accepted or declined by the U.S. Attorneys Office, is to be kept by the field office.

#### 17.7 Likelihood of Removal.

Under 8 CFR 241.13, only HQCDU has the authority to make a custody determination based on the likelihood of removal in the reasonably foreseeable future. However, the field office may consider the availability of a travel document as a factor when making the custody decision pursuant to the 8 CFR 241.4 at the time of the 90-day review. HQCDU will review the case under 8 CFR 241.13 once the deciding official at the field

level transfers custody jurisdiction to HQCDU following the 90 day review or at day 181, if the deciding official had retained the custody determination for an additional 3 months after the expiration of the removal period.

The alien is required to assist in removal by helping to obtain a travel document and making individual efforts to effectuate his or her own removal. Under the Zadvydas decision, the alien has the initial burden of showing good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. The Service has the burden to rebut the aliens claim. The field office is to ensure that the alien knows his/her obligation to assist in obtaining a travel document. In addition, the field office is to actively pursue a travel document with the foreign consulate or embassy.

When reviewing inadmissible or excludable aliens (arriving aliens and aliens paroled pursuant to Section 212(d)(5) of the Act), 8 CFR 241.13 is inapplicable. However, the likelihood of repatriation may be weighed along with the threat and flight risk factors contained in 8 CFR 241.4.

Nonimmigrant S-visa Cases. Aliens pending an S-visa are not to be removed from the United States. Further clarification regarding release from custody is currently pending with General Counsel and with HQINV.

#### 17.8 Possible Decisions of Deciding Officials At Field Level (Up to Day 180).

(a) Remain in Custody. A deciding official may decide to continue to detain an alien where:

The alien has failed to comply with requirement to assist in his or her removal, and the removal period has been extended;

The aliens removal is significantly feasible in the reasonably foreseeable future and/or alien is deemed a threat to the public or a flight risk; or

The alien is deemed a flight risk or threat (for arriving aliens and aliens paroled into the U.S. pursuant to Section 212(d)(5) of the Act).

(b) Release the Alien Under an Order of Supervision. Release the alien on an Order of Supervision (with required conditions) as the alien is not a threat to the public or a flight risk (and removal is not feasible in the foreseeable future) or because the alien is an arriving alien who is not deemed a threat or flight risk.

In the written detain decision, notification that custody jurisdiction will transfer to HQCDU on day 181, or 90 days after the end of the removal period, if period was extended (whichever is later), must be included.

POCR write-ups are to be complete, thorough, and must include all pertinent facts of the aliens case. Copies of documentation submitted by the alien are to be included in the

POCR package sent to HQCDU. All decisions must include case specific justifications. Boiler plate write-ups are unacceptable.

#### 17.9 Serving Notice of Final Decision.

The deciding official will notify the alien in writing whether he or she is to be released from custody, or that he or she will be continued in detention pending removal or further review of his or her custody status.

If an alien is to be released from custody pending an action by the government or the alien, the alien must be notified of the conditions that must be met before the alien will be released. Upon the conditions being met, the alien will be served the Release Notification, Order of Supervision (Form I-220B) with all appropriate attachments, and then released under an order of supervision.

#### 17.10 Postponement of Review.

In the case of an alien who is in the custody of the Service, the local office director or the HQCDU Director may, in his or her discretion, suspend or postpone the custody review process if such detainee's prompt removal is practicable and proper, or for other good cause. The decision and reasons for the delay shall be documented in the alien's custody review file and A-file, as appropriate. Reasonable care will be exercised to ensure that the alien's case is reviewed once the reason for delay is remedied or if the alien is not removed from the United States as anticipated at the time the review was suspended or postponed.

#### 17.11 Headquarters Custody Determination Unit (HQCDU).

(a) Cases Detained Beyond the 90-Day Removal Period. The field may maintain jurisdiction of all cases until the 180-day point (or transfer custody determination jurisdiction to Headquarters after the 90 day review, as removal is unlikely). If at day 181, removal has not been effected or release has not been granted, the 90-day POCR Worksheet package will be forwarded to HQCDU with a memorandum updating the worksheet package. Cases in which the alien has failed to cooperate will not be sent to HQCDU, as the removal period has not yet begun or has been extended.

(b) For All Cases Over 180 Days (90 Days Beyond the 90-Day Removal Period). HQCDU will hold jurisdiction for custody decisions pursuant to 8 CFR 241.4, 241.13, and 241.14. The field officer will retain responsibility for docket control, case management, completion of future reviews, and will continue appropriate follow up efforts to remove the alien. Once HQCDU issues a decision to continue detention and the alien has not been removed within a reasonable time frame, the local field office is to inform HQCDU by way of a memorandum (which is also to include any updates to the POCR package) so that a new custody decision under 8 CFR 241.13 may be made. The review described in 8 CFR 241.13 is not an annual review. Reviews for inadmissible aliens pursuant to 8 CFR 241.4 are to be done annually, after the initial 90-day review.

For habeas cases over 180-days in custody, HQCDU will coordinate with the United States Attorneys Office (USAO), the Department of Justice Office of Immigration Litigation (OIL), and the INS Office of the General Counsel (OGC). The preferred method of transmittal of PO CR Worksheet packages to HQCDU is express mail.

(c) Referral to HQCDU Under 8 CFR 241.14 (Special Circumstances). Once the Service determines that removal is not likely to occur in the reasonably foreseeable future (pursuant to 8 CFR 241.13, usually because a travel document cannot be obtained), an alien may remain in Service custody only if he or she meets the criteria set forth in 8 CFR 241.14, as described below:

Medical Case: contagious disease(s) that is a threat to the public safety, 8 CFR 241.14(b).

Release that may result in adverse foreign policy consequences, 8 CFR 241.14(c).

Release that may pose a significant threat to national security or a risk of terrorism, 8 CFR 241.14(d).

Alien has been determined to be specially dangerous due to the prior commission of a crime of violence (8 CFR 241.14(f)(1)(i)), a mental condition or personality disorder (8 CFR 241.14(f)(1)(ii)), and no conditions of release can reasonably be expected to ensure the safety to the public (8 CFR 241.14(f)(1)(iii)). Determinations made under 8 CFR 241.14(f) require a physicians report based on a full medical and psychiatric evaluation of the alien (8 CFR 241.14 (f)(3)).

(d) Consultation with Public Health Service. On all referrals that fall into the 1st or 4th category above (medical cases or specially dangerous), HQCDU will refer the case to HQPHS for certification of condition. Only HQCDU can make custody determinations under 8 CFR 241.14. Upon a decision by HQCDU to release an alien after referral under 8 CFR 241.14, HQCDU will forward to the field the release decision and the Public Health Services recommendations for appropriate conditions to be included in the order of supervision.

Upon a decision by HQCDU to detain an alien under 8 CFR 241.14(b), (c), or (d), HQCDU will forward the detain decision for service on the alien. For an alien detained under 8 CFR 241.14(f) as having been determined to be specially dangerous by Headquarters, HQCDU will forward to the field the detain decision and all relevant documents for service on the alien and EOIR. The field office must complete

Form I-863, Notice of Referral to Immigration Judge, and serve copies of the entire package on the alien and EOIR.

HQCDU retains the authority to take over jurisdiction of custody determination of any case, at any time.

(e) Other 8 CFR 241.14 Cases. For cases falling under 8 CFR 241.14(c) and (d), HQCDU will coordinate certification requirements with the Office of General Counsel. A complete copy of the A-file is to be sent to HQ for all potential 8 CFR 241.14 cases.

(f) Habeas Cases. For all cases where a Petition for Writ of Habeas Corpus is filed in the United States District Court where the case is within the 180-day period, the field will coordinate with the Office of the District Counsel, USAO, and/or OIL as appropriate. Cases beyond the 180-day period will be coordinated by HQCDU, Office of General Counsel, and the Office of Immigration Litigation, as well as the local USAO as appropriate.

(g) DACS. All pertinent information is to be noted in the appropriate screens (b)(2)High by the field.

(b)(2)High

## 17.12 Orders of Supervision.

(a) Release. Aliens approved for release will be released under an Order of Supervision (O/S) with such conditions that are deemed necessary (for example, regular reporting requirements, requirements to obtain travel documents, rehabilitative treatment programs, residence in halfway house, and so forth). The alien is to be served with the Release Notification decision, as well as the O/S (Form I-220B) with appropriate attachments. Bonds may be authorized for certain cases in order to ensure that the alien abides by the conditions of the O/S. Bond amounts are to be reasonable and must be in a range that the alien should be able to post. Chapter 15 (section 15.1(b)), and 8 CFR 241.5 contain additional information and guidance regarding O/S releases.

Release-on-bond decisions are to include instructions on how the alien may request reconsideration of the bond amount. The aliens request for reconsideration should include appropriate financial documentation in support of his/her request.

Conditions of release that require the successful completion of a halfway house or other outpatient treatment program will be coordinated between HQCDU and HQPHS. The local field office is to ensure that the alien provides proof of completion of the required program when he/she reports in on the O/S.

Initial release conditions may require weekly reporting for a period of time to be determined by each field office. If satisfactory appearances are made, reporting may be extended to monthly intervals. In no circumstance will the frequency-of-reporting requirement be less than once every three months. Failure-to-appear cases will be considered under the National Fugitive Operations program (NFOP) (Chapter 19) within five working days of the violation. The alien is required to report to a field office or sub-office with a permanent Detention and Removal Operations presence.

(b) Revocation of Release. Upon violation of the conditions of the order of supervision, a complete review of the circumstances surrounding the violation must occur in order to make the determination to revoke the order. The alien is to be promptly served

with the Notice of Revocation of Release to indicate the reason for the revocation. In addition, an informal interview with the alien is to be conducted to afford the alien the opportunity to respond to the reasons for the revocation. If the alien is not released after the informal interview, the POCR review process begins anew. The government has another six months in order to effect the aliens removal, or to determine what conditions should govern the aliens release, if he or she cannot be removed. If the decision is made to allow the alien to remain on the order of supervision, additional conditions may be imposed on the alien. Certain repeat offenders may be good candidates for O/S bonds.

(c) Revocation of Release Due to Changed Circumstances. Upon the determination that a released alien can be removed, the aliens release may be revoked and the alien may be returned to custody. Upon return to Service custody, the same procedure as stated in (b) above are to be followed. If the circumstances under which an alien was taken back into custody no longer exist and his/her removal is no longer imminent, the alien is to be released.

The decision to revoke an aliens release may be made by the field office where the alien is physically located. The HQCDU may review any decision to revoke made at the field level. At any time after HQCDU has issued a decision letter to release an alien under 8 CFR 241.13 and before an alien has been physically released from custody, if the field receives notification a travel document will be issued, the notice of release is automatically revoked. The field will issue a withdrawal of release approval letter to the alien.

#### 17.13 Future Reviews.

(a) General Field Office Responsibilities. If an alien is maintained in custody after a HQCDU review at the 180-day point, the aliens case will be reviewed again once the field office has made a determination that removal in the reasonably foreseeable future is not likely. The field office is to notify HQCDU by way of a memorandum or new updated POCR worksheet, so that a new custody decision may be made by HQCDU. The field officer is responsible for conducting the review, completing the POCR Worksheet package, and forwarding the field officers recommendation to HQCDU for a new decision.

Regardless of the mandated formal case reviews, each case officer is to review every long-term final order case and update DACS at the minimum every 30 days.

See the HQCDU Web Site for POCR-related forms and sample decisions.

(b) For Cases Under 8 CFR 241.4. After a decision to detain an alien as a threat to the public or a flight risk pursuant to 8 CFR 241.4, an alien may request a new review, based on a material change in circumstances, not more than once every 3 months in the interim between annual reviews. HQCDU has 90 days to respond to the aliens request. The alien will file this request with the field office having jurisdiction over his case. The field office will review the request to ensure it meets the requirements for a new request. If the



request is not in compliance with the requirements, the field will serve the alien with a notice stating the alien is not eligible for the review, as he has not met the requirements for a new review. If the requirements are met, the field will update the most recent POCR worksheet completed in the field and will forward the aliens request, POCR worksheet, and field update to HQCDU. Although the regulations allow for annual reviews pursuant to 8 CFR 241.4, the Supreme Courts restrictions on post-order detention in the Zadvydas decision must be taken into consideration. In essence, most cases (except those in which Zadvydas does not apply) will not remain subject to 8 CFR 241.4. Once their removal is no longer reasonably foreseeable, they would revert to a review under 8 CFR 241.13.

(c) For Cases Under 8 CFR 241.13. An alien may request a review under 8 CFR 241.13 by providing evidence that his removal will not occur in the reasonably foreseeable future. He may request this review six months after the HQCDU decision denying release under this section. The alien will file this request with the field office having jurisdiction over his case. The field office will review the request to ensure it meets the requirements for a new request. If the request is not in compliance with the requirements, the field will serve the alien with a notice stating the alien is not eligible for the review, as he has not met the requirements for a new review. If the requirements are met, the field will update the most recent POCR worksheet completed in the field and will forward the aliens request, POCR worksheet, and field update to HQCDU. HQCDU will consider any additional evidence provided by the alien or otherwise available and render a new decision on the likelihood of removal in the reasonably foreseeable future.

(d) Special Circumstances Case Reviews. For aliens detained pursuant to 8 CFR 241.14, further reviews are governed by 8 CFR 241.14(d), in the case of Foreign Policy and Security Concerns, and by 8 CFR 241.14(k), in the case of specially dangerous aliens.

17.14 Sanctions Against Countries That Fail to Issue Travel Documents.

See Chapter 16.1(a) and 16.2(b).

17.15 Failure to Cooperate.

## **Chapter 18: Removal Process: Mariel Cubans**

References:

Regulations: 8 CFR 212

Other: Cuban Review Plan Training Manual

Between April and October 1980, approximately 129,000 Cubans fled their nation in boats and arrived in or near Key West, Florida, during what became known as the freedom flotilla, or Mariel Boatlift. The migrants were initially screened by the Immigration and Naturalization Service, and most were paroled into the United States to family members or other sponsors. Under the Cuban Adjustment Act, Pub. L. 89-732

(Nov. 2, 1966), they were given the opportunity to apply to adjust their status to that of lawful permanent resident one year and one day after having been paroled or admitted to the United States.

In July 1987, the INS initiated a status review plan, under which each detained Mariel Cubans file is reviewed, a personal interview is conducted if necessary, and a recommendation is made to the Commissioner of the INS as to whether the alien should be paroled or detained. This determination is made on the basis of the detainees criminal history, history of mental illness, and whether s/he poses a threat to the community.

The Commissioner of INS is conferred the authority to parole and detain Mariel Cubans under 8 CFR 212.12. Section 212.12 applies to any native of Cuba who last came to the United States between April 15, 1980 and October 20, 1980 (a Mariel Cuban), and who is detained by the INS, or detained under the authority of the INS. Each officer participating in the Cuban Review Plan will be familiar with the laws, policies, and procedures relating to interviewing and making recommendations for release or placement of Mariel Cubans.

All appropriate policy and procedures governing the Cuban Review Plan can be found in the Cuban Review Plan Training Manual, included as Appendix 18-1 of this manual.

## **Chapter 19: Removal Process: National Fugitive Operations Program (NFOP) [Reserved]**

## **Chapter 20: Removal Process: Relief From Removal**

20.1    Relief From Removal

20.2    Cancellation of Removal

20.3    Asylum

20.4    Withholding or Deferral of Removal

20.5    Private Bills

20.6    Restoration or Adjustment of Status and Waivers

20.7    Stays of Removal

20.8    Deferred Action

20.9    Exercising Discretion

20.10    Temporary Protected Status vs. Deferred Enforced Departure

20.11 Nicaraguan Adjustment and Central American Relief Act (NACARA) and Haitian Refugee Immigration Fairness Act (HRIFA)

20.12 Voluntary Departure

References:

INA: 101, 208, 212, 236, 237, 240A, 241, 242, 244, 245, 248, 249

Regulations: 8 CFR 10

03.43, 208, 1240.20, 1240.21, 1240.33, 1240.34, 241.6, 245, 249, 274A

20.1 Relief from Removal.

Aliens in removal proceedings and those with final orders of removal may be eligible for certain forms of relief. It is important for you to be familiar with these forms of relief because aliens under your docket control may be eligible. You may be required to cease all removal actions on eligible detained and non-detained aliens. Additionally, certain forms of relief may require the administrative closure of removal proceedings or the release of aliens in custody. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) eliminated some forms of relief and created others. You may encounter an alien under docket control whose removal proceedings were initiated prior to the enactment of IIRIRA. Therefore, you must know the forms of relief that were available prior to IIRIRA and know what actions each Service officer should take to facilitate each particular form of relief.

First, consider the alien's immigration status and criminal history before pursuing relief from removal. Run a criminal-history check if you cannot find one conducted during the past 90 days.

The Office of the Principal Legal Adviser reviews the contents of each A file before presenting the case to the Executive Office for Immigration Review. If the file does not contain a current criminal history (within 90 days), the attorney will not proceed with the case and inform you of the incomplete record. You will then run the required criminal-history check so the Office of the Principal Legal Advisor can verify the record and proceed with the request for relief.

20.2 Cancellation of Removal.

(a) General. Cancellation of removal is a discretionary form of relief that may be granted to an alien during the course of a removal hearing. A detailed description of cancellation of removal may be found at INA 240A and 8 CFR 1240.20. Cancellation of removal applies to aliens placed in removal proceedings after April 1, 1997. Normally, cancellation of removal can be granted only by an immigration judge or by the Board of Immigration Appeals. However, a special class of aliens, defined by section 203 of the

Nicaraguan Adjustment and Central American Relief Act (NACARA), Pub. L. 105-100 is eligible to have cancellation of removal (or suspension of deportation) favorably adjudicated by an asylum officer. Before IIRIRA became effective, suspension of deportation was the form of relief very similar to cancellation of removal for nonpermanent residents. The eligibility criteria for suspension of deportation can be found at 8 CFR 1240.21. This regulation refers to section 244(a) of the Act, as in effect prior to April 1, 1997.

(b) Eligibility Criteria. An eligible alien may apply for cancellation of removal on Form EOIR-42A, Application for Cancellation of Removal for Certain Permanent Residents, or Form EOIR-42B, Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents. Eligibility criteria for permanent residents may be found in section 240A(a) of the Act. Eligibility criteria for non-permanent residents may be found in section 240A(b) of the Act.

(c) Closing Actions. Once a decision to grant cancellation of removal has been rendered, and that decision becomes final, the case must be closed in DACS. Departure Cleared Status code B in DACS should be used to close the case.

(1) Cancellation of Removal Denied. If cancellation is denied, and voluntary departure has not been granted, the deportation officer should proceed with normal removal actions, including DACS update.

(2) Cancellation Granted to Permanent Resident. If cancellation of removal is granted to a Lawful Permanent Resident Alien, the alien retains status and the case must be closed in DACS to reflect the relief granted. Departure Cleared Status code B in DACS should be used to close the case.

(3) Cancellation Granted to Nonpermanent Resident. If cancellation of removal is granted to a nonpermanent resident, the alien becomes eligible for adjustment of status and should be processed accordingly. The Deportation Branch may assist the Examinations Branch in processing these cases. The case must be closed in DACS to reflect the relief granted. Departure Cleared Status code B in DACS should be used to close the case.

### 20.3 Asylum.

Asylum, pursuant to section 208 of the Act, is among the most common forms of relief sought by aliens who are in removal proceedings. Regulations governing jurisdiction, filing, employment authorization, and adjudication are found in 8 CFR Part 208. Except as otherwise provided in section 208(a)(2) of the Act, asylum claims must be filed within one year of entry into the United States. Asylum claims are ordinarily first adjudicated by an Asylum officer. However, once an alien is placed into removal proceedings, an initial asylum claim may also be filed with the immigration judge.

If an alien in custody indicates they would like to apply for asylum, provide them with Form I-589, Application for Asylum and Withholding of Removal, and supporting forms.

You are required to advise all aliens of the availability of free legal services. [See detention standards in Appendix 26-1 of this manual.]

Once an alien is granted asylum by an immigration judge during the course of a removal hearing, the proceedings are terminated. Once asylum is granted, employment authorization may be granted pursuant to 8 CFR 274a.12(a)(5). The case must be closed to reflect the relief granted. Departure Cleared Status code B in DACS should be used to close the case.

Motions to Reopen or Reconsider. The Service is not prohibited from filing a motion to reopen or reconsider in accordance with 8 CFR 3.2 (Motions before BIA) and 3.23 (Motions before the Immigration Judge). If conditions change in the country from which asylum has been granted, there was fraud in the application, or other conditions exist, the BIA or an immigration judge may terminate the prior grant of asylum (see 8 CFR 208.24).

#### 20.4 Withholding or Deferral of Removal.

(a) General. Other forms of relief, similar to asylum, are withholding of removal and deferral of removal. Normally, an immigration judge or the Board of Immigration Appeals makes the decision on withholding or deferral of removal. An alien will be considered for these forms of relief if the alien has filed Form I-589 for asylum in removal proceedings.

(b) Withholding of Removal Based on Protected Characteristic in the Refugee Definition. Section 241(b)(3) of the Act restricts the removal of an alien to a country where the alien's life or freedom would be threatened because of the alien's race, religion, nationality, membership in a particular social group, or political opinion. Aliens convicted of particularly serious crimes both inside and outside of the United States, aliens deemed to pose a security risk to the United States, and aliens who have participated in the persecution of others are ineligible for withholding of removal.

(c) Withholding of Removal under the Convention Against Torture. The United States is obligated to abide by the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Convention Against Torture). Section 2242 of the Foreign Affairs Reform and Restructuring Act of 1998, Pub L. 105-277, provides for how the U.S. will comply with the Convention Against Torture. Under Article 3 of the Convention Against Torture, the United States has agreed not to return a person to another state where he or she would be tortured. The regulations regarding claims under the Convention Against Torture are found at 8 CFR 208.16, 208.17 and 208.18. Aliens under docket control may qualify to apply for withholding under these regulations. An alien granted withholding of removal may be granted employment authorization.

(d) Limitations of Withholding of Removal. The following are limitations to this form of relief:

(1) Removal to Third Country. Withholding of removal is country specific. There is no prohibition on removing an alien to a third country where the alien would be safe from persecution or torture.

(2) Does Not Qualify an Alien for Adjustment of Status. There is no provision for an alien who has been granted withholding of removal to adjust status to that of a Lawful Permanent Resident based on the grant.

(3) Motions to Reopen or Reconsider. The Service is not prohibited from filing a motion to reopen or reconsider in accordance with 8 CFR 3.2 (Motions before BIA) and 3.23 (Motions before the Immigration Judge). If conditions change in the country to which withholding of removal has been granted, there was fraud in the application, or other conditions exist, the BIA or an immigration judge may terminate withholding previously granted by an immigration judge (see 8 CFR 208.24).

(e) Deferral of Removal under the Convention Against Torture can be found in 8 CFR 208.17. An alien who is ineligible for withholding of removal because of criminal activity, security reasons or persecution of others, may be granted deferral of removal to the country where it is more likely than not the alien would be tortured. There is no prohibition on removing an alien to a third country where the alien would be safe from torture. Deferral of removal does not negate or limit the application of law, regulation, or policy relating to the detention of the alien.

Adjustment of status is not available to an alien granted deferral of removal. Deferral of Removal may be terminated in accordance with 8 CFR 208.17(d), 8 CFR 208.17(f) and 8 CFR 208.18(c). The alien can request that deferral be terminated under 8 CFR 208.17(e).

## 20.5 Private Bills.

This subject is discussed in detail in Chapter 23 of the Special Agent's Field Manual.

## 20.6 Restoration or Adjustment of Status and Waivers.

(a) General. If an alien is granted adjustment of status or relief by an immigration judge, the Deportation Branch must close the case in DACS. Departure cleared status B should be used to close these cases. Depending on local office policy, deportation officers may assist in further processing of the alien for an alien registration card if applicable.

(b) Adjustment of Status. Some aliens in or subject to removal proceedings may seek relief from deportation through adjustment of status to permanent residency. Such adjustment may be granted by an immigration judge during the course of removal proceedings. Additionally, actual commencement of removal proceedings may be deferred by the arresting or processing officer where it appears the alien may be entitled to some form of relief. Section 245 of the Act is the principal authority for adjustment of status to permanent resident. Occasionally, adjustment may be granted pursuant to section 249 of the Act, Creation of Records of Lawful Admission for Permanent

Residence, or one of several other special adjustment provisions set by Congress from time to time.

Not all aliens, even those with an approved visa petition, are eligible for adjustment. If an alien has an approved visa petition, but no visa number is available, he or she may not apply for adjustment. Section 204(a) of the Act specifies those aliens who have immediate relative status, as well as those with preference status. Categories of those who are not eligible are described in detail within section 245 of the Act. Each of the other special provisions also has specific conditions and restrictions.

(c) **Discretionary Waivers Which May Apply in Removal Proceedings.** An alien in removal proceedings may apply for certain waivers which overcome the grounds for removal. Section 237 of the Act contains the terms and conditions of waivers which apply to certain classes of deportable aliens. Section 212 of the Act contains the terms and conditions of waivers which apply to certain classes of aliens who are inadmissible or were inadmissible at time of entry or adjustment of status.

(d) **Reinstatement to Status and Change of Status.** In some instances, an alien who has fallen out of status may be eligible for reinstatement to his or her original status or may be eligible for a change to another nonimmigrant status. Questions regarding such matters should be referred to the local Examinations Branch for consideration.

(e) **Temporary Protected Status (TPS).** Section 244 of the Act provides for "Temporary Protected Status" for nationals of countries designated by the Attorney General, based on natural disasters, civil unrest, etc. Section 20.9 of this chapter contains more information on TPS. Also, you may want to view the information on TPS found at [http://www.immigration.gov/graphics/services/tps\\_inter.htm](http://www.immigration.gov/graphics/services/tps_inter.htm).

## 20.7 Stay of Deportation or Removal.

(a) **General.** A stay of deportation or removal reflects an administrative decision by the Service or a reviewing body that removal against an alien should not proceed. It may be granted after the completion of a removal proceeding when the only remaining step in a case is the physical removal of the alien. A stay of deportation or removal is not considered an immigration benefit or waiver because it only bestows temporary relief from removal upon the alien.

(b) **Stays Granted by the Service.** If a final order has been entered based on deportability, the District Director has wide discretion to grant a stay of deportation or removal. If the final order has been entered against an inadmissible arriving alien, the District Director may stay immediate execution of the order as explained in 20.7(b)(2) below.

(1) **Deportable Aliens Ordered Removed.** When there are compelling humanitarian factors, or when a stay is deemed to be in the interest of the government, a District Director may grant a stay of deportation or removal for such period of time and under

such conditions as he or she deems necessary. A stay of deportation or removal under this paragraph may also be granted by a District Director upon his or her own initiative without application being made by the alien. The detention rules found at 8 CFR Part 241 are applicable to a deportable alien granted a stay of deportation or removal.

(2) Inadmissible Arriving Aliens Ordered Removed. Section 241(c)(2) of the Act allows the Attorney General to stay the removal of an alien arriving at a port of entry. However, a stay of removal under this section requires a determination either that immediate removal is not practicable or proper, or the alien is needed to testify in the prosecution of another person in a criminal trial. Aliens granted a stay because their removal is impracticable or improper must be detained. Aliens who are granted a stay to testify in a criminal prosecution, however, may be released if certain conditions are met. The alien must post a bond of at least \$500, must agree to appear when required to testify and for removal, and must agree to any other conditions prescribed by the Attorney General.

(c) Stays for Appeals or Judicial Review. Timely filed requests for post hearing reviews may stay removal depending on the case. However, the District Director may, in his or her discretion, remove an alien who has filed an untimely appeal, unless the court, an immigration judge, or the BIA has affirmatively stayed removal.

(1) Appeals to the Board of Immigration Appeals (BIA). Under 8 CFR 3.6, the timely filing of an appeal of a decision by the Immigration Court will operate as an automatic stay. This applies to appeals of all decisions by the Immigration Court except an appeal of a denial of a motion reopen or reconsider or denial of a request for a stay of deportation or removal. The Service shall take all reasonable steps to comply with a stay granted by an immigration judge or the BIA. However, such a stay shall cease to have effect if granted (or communicated) after the alien has been placed aboard an aircraft or other conveyance for removal and the normal boarding has been completed. See 8 CFR 241.6(c).

(2) Requests for Judicial Review. The filing of a petition seeking review in federal court does not stay the removal of an alien unless the reviewing court affirmatively orders a stay. See 8 CFR 241.3 and section 242(b)(3)(B) of the Act.

(3) Motions to Reopen or Reconsider. The filing of a motion to reopen or motion to reconsider before the Immigration Court or BIA does not operate as an automatic stay of deportation or removal, unless the removal order was issued in absentia. See 8 CFR 1003.2(f) and 8 CFR 1003.23(b)(1)(v).

(d) Injunctive Relief from Removal. In conjunction with other proceedings, a U.S. District Court Judge or other judge will sometimes issue an order that prohibits a Service action. On occasion the removal of an alien or class of aliens will be stayed by a temporary restraining order or an injunction. A temporary restraining order is an emergency remedy of short duration. There are many kinds of injunctions and the period of time covered by an injunction may vary. Close communication with the United States



Attorney and the Office of General Counsel through your District Counsel's office is essential to insure compliance with the order of the court.

(e) **Adjudication and Decision.** Title 8 CFR 241.6 governs administrative stays of removal. An alien ordered removed may apply for a stay of deportation or removal on Form I-246, Application for Stay of Deportation or Removal. The application for administrative stay of removal should be filed with the District Director having jurisdiction over where the alien resides. There are a multitude of reasons for filing for a stay. Common reasons include the need for urgent medical treatment, disposition of property, and unrelated legal proceedings. The adjudication of a stay of deportation or removal is often delegated to a deportation officer. Care should be exercised to verify any claimed facts, such as serious medical problems, etc. The decision of the District Director is final and may not be appealed administratively. Neither the filing of the application request nor the failure to receive notice of disposition of the request shall delay removal or relieve the alien from strict compliance with any outstanding notice to surrender for deportation or removal.

(f) **Employment Authorization.** There is no statutory or regulatory authority to grant employment authorization to an alien based on a grant of a stay of deportation or removal.

#### 20.8 Deferred Action.

(a) **General.** A District Director may, in his or her discretion, recommend deferral of (removal) action, an act of administrative choice to give some cases lower priority and in no way an entitlement, in appropriate cases. The deferred action category recognizes that the Service has limited enforcement resources and that every attempt should be made administratively to utilize these resources in a manner which will achieve the greatest impact under the immigration laws. In making deferred action determinations, the factors listed in paragraph (b), among others, should be considered.

Deferred action does not confer any immigration status upon an alien, nor is it in any way a reflection of an alien's immigration status. It does not affect periods of unlawful presence as defined in section 212(a)(9) of the Act, and does not alter the status of any alien who is present in the United States without being inspected and admitted. Under no circumstances does deferred action operate to cure any defect in status under any section of the Act for any purpose. Since deferred action is not an immigration status, no alien has the right to deferred action. It is used solely in the discretion of the Service and confers no protection or benefit upon an alien. Deferred action does not preclude the Service from commencing removal proceedings at any time against an alien. Any request by an alien (or another party on behalf of such alien) for deferred action should be considered in the same manner as other correspondence. The alien should be advised that he or she may not apply for deferred action, but that the Service will review the facts presented and consider deferred action as well as any other appropriate course of action.

(b) Factors to be Considered. The following factors, among others, should be evaluated as part of a deferred action determination:

(1) The Likelihood That the Service Will Ultimately Remove the Alien Based on Factors Including:

likelihood that the alien will depart without formal proceedings (e.g., minor child who will accompany deportable parents);

age or physical condition affecting ability to travel;

the likelihood that another country will accept the alien;

the likelihood that the alien will be able to qualify for some form of relief which would prevent or indefinitely delay removal.

(2) Sympathetic Factors: The presence of sympathetic factors which, because of a desire on the part of administrative or judicial authorities to reach a favorable decision, could result in a distortion of the law with unfavorable implications for future cases.

(3) Priority Given to a Class of Deportable Aliens: Whether or not the individual is a member of a class of deportable aliens whose removal has been given a high enforcement priority (e.g., dangerous criminals, alien smugglers, drug traffickers, terrorists, war criminals, habitual immigration violators).

(4) Service Cooperation with Other Agencies: Whether the alien's continued presence in the U.S. is desired by local, state, or federal law enforcement authorities for purposes of ongoing criminal or civil investigation or prosecution.

(c) Procedures. Normally a decision to recommend deferred action is made by the District Director, but in limited circumstances, the decision may be made by the Eastern Service Center Director.

(1) District Director. If the District Director recommends that removal action in an alien's case be deferred, the Director shall advise the Regional Director of such recommendation using Form G-312, Deferred Action Case Summary. The District Director shall sign the recommendation and shall explain the basis for his or her recommendation. The Regional Director shall consider the recommendation and determine whether further action on the alien's case should be deferred. The decision whether or not to defer action shall be communicated in writing by the Regional Director to the District Director. Upon receipt of notification of deferral by the Regional Director, the District Director shall notify the applicant, by letter, of the action taken and advise the alien that he or she may apply for employment authorization in accordance with 8 CFR 274a.12(c)(14). A decision not to defer action in such a case does not need to be separately communicated to the alien.

(2) Center Director (Eastern). In limited circumstances, Eastern Service Center Director may defer action on removal of an alien. Upon approval of an Form I-360 petition by a battered or abused spouse or child in his or her own behalf, the director shall separately consider the particular facts of each case and determine if deferred action is appropriate. Although the approval of such a petition will weigh in favor of deferred action, each decision must be considered individually, based on all the facts present and the factors discussed above. Upon deferral of action, the Center Director shall advise the alien, by letter, of the action taken and advise him or her of eligibility to request employment authorization. A decision not to defer action in such a case does not need to be separately communicated to the alien. Upon deferral of removal action, the Center Director shall include a copy of the G-312 in the alien's A-file and forward the file to the local Service office having jurisdiction over the alien's residence for docket control.

(d) Employment Authorization. Although deferred action is not an immigration status, an alien may be granted work authorization based on deferred action in his or her case, pursuant to 8 CFR 274a.12(c)(14).

(e) Periodic Review. Interim or biennial reviews should be conducted by both District and Regional Directors to determine whether deferred action cases should be continued or the alien removed from the deferred action category. District reviews must determine if there is any change in the circumstances of the case and report any pertinent facts to the Regional Director. Results of the review and a recommendation to continue or terminate deferred action shall be reported to the Regional Director via memorandum. The Regional Director shall endorse the memorandum with his or her decision and return it to the District Director for inclusion in the alien's file.

District Directors must also review deferred action cases within their jurisdiction which were originally granted by the Eastern Service Center Director. Changed circumstances in such cases must be reported to the Center Director for consideration of terminating the deferred action.

Regions should compare statistics among their districts to ensure consistent application of this highly sensitive program.

(f) Termination of Deferred Action. During the course of the periodic review, or at any other time if the District Director determines that circumstances of the case no longer warrant deferred action, he or she shall notify the Regional Director of the changed circumstances and recommend termination. The Regional Director shall determine if the deferred action should be terminated and notify the District Director of the decision. The District Director shall, in turn, notify the alien of the decision by letter. The alien is not entitled to an appeal of this decision. The Eastern Service Center Director may also terminate deferred action in any case he or she originally granted. If the Eastern Service Center Director terminates deferred action, he or she must report the decision to the Regional Director and to the appropriate District Director.

Upon termination of deferred action, any relating employment authorization must be revoked.

## 20.9 Exercising Discretion.

(a) Distinguishing Prosecutorial from Adjudicative Discretion. In the course of their duties, Service officers are likely to encounter a variety of situations in which they may be called upon to make discretionary decisions. The legal requirements, and the available scope of discretion, will depend upon the type of discretionary decision being made. There are two general types of discretion: prosecutorial (or enforcement) discretion, and adjudicative discretion.

Prosecutorial discretion is a decision by an agency charged with enforcing the law to enforce, or not enforce, the law against someone. To put it another way, a prosecutorial decision is a choice whether to exercise the coercive power of the state in order to deprive an individual of a liberty or property interest, under a law that provides the agency with authority to take such an action. The term "prosecutorial" can be deceptive, because the scope of decisions covered by this doctrine include decisions, such as whether to arrest a suspected violator, other than the specifically "prosecutorial" decision whether to file legal charges against someone. Adjudicative discretion, by contrast, involves the affirmative decision whether to grant a benefit under adjudicative standards and procedures provided by statute, regulation or policy that provide the agency with a measure of discretion in determining whether to provide the benefit.

The distinction between the discretion exercised in an adjudicative decision regarding an affirmative grant of a benefit and a prosecutorial decision is a fundamental one; yet, it is sometimes blurred and difficult to determine in the immigration context. Some decisions that may, on their face, look like a benefit grant -- such as an INS stay of removal or grant of deferred action -- really are just mechanisms for formalizing an exercise of prosecutorial discretion. Others, such as voluntary departure, include elements of both "benefit" and enforcement. Many proceedings combine both adjudicative and prosecutorial discretion, such as a removal proceeding in which an asylum application, adjustment of status, or a request for cancellation of removal, is at issue. Officers who are in doubt about what standards may apply to a decision because of uncertainty about what type of discretion is involved should consult their supervisor and/or Service counsel.

Service enforcement decisions involving prosecutorial discretion may involve either a liberty or a property interest. Decisions involving a liberty interest that are likely to be relevant to a deportation officer's duties include:

whom to arrest;

whom to refer for criminal prosecution;

whether or not to put an alien in removal proceedings, as opposed to or offering some lesser consequence of his or her immigration violation such as voluntary departure or voluntary return, or simply not pursuing the matter further;

whether to place an alien in detention (but note that detention discretion has been limited by statute, such as section 236(c) of the Act) and

whether to execute an order of removal.

INS prosecutorial decisions involving property interests include whether to seek a carrier fine, civil document fraud or employer sanctions money penalty, or forfeiture against INA violators.

Adjudicative discretion, on the other hand, is exercised in certain specific types of benefit applications such as:

adjustment of status;

change of nonimmigrant status;

extension of nonimmigrant stay;

asylum;

cancellation of removal;

voluntary departure

certain employment authorization requests; and

various waivers of inadmissibility.

Such discretionary action is specifically provided in statute or regulation for these cases. Other types of adjudicative actions, such as visa petitions, may not have any discretionary component.

(b) **Exercising Prosecutorial Discretion.** The "discretion" in prosecutorial discretion means that prosecutorial decisions are not subject to review or reversal by the courts, except in extremely narrow circumstances. For this reason, it is a powerful tool that must be used responsibly. Because the Service has only limited resources, decisions must regularly be made concerning which cases are the most appropriate use of these resources. INS officers are not only authorized by law but also expected to exercise discretion in a judicious manner at all stages of the enforcement process -- from planning investigations to enforcing final orders -- subject to their chains of command and to the particular responsibilities and authorities applicable to their specific position. Decisions whether or not to initiate removal cases or take other enforcement action must be made

consistently and the officer must be able to articulate their reasoning behind their actions. Each exercise of prosecutorial discretion must consider the individual facts of the case. Arbitrary application of enforcement tools must be avoided.

For a legal opinion on the exercise and limitations of prosecutorial discretion within the Service, see the Special Agent's Field Manual Appendix 14-5. A memorandum from the Commissioner, dated Nov. 17, 2000, also discusses prosecutorial discretion (see Special Agent's Field Manual Appendix 14-6).

(c) **Exercising Adjudicative Discretion.** Each type of adjudicative benefit has specific eligibility requirements and includes certain restrictions. Individuals denied some benefits (such as asylum) as a result of a discretionary decision by the Service might have further opportunities for review of the decision, while other discretionary decisions (such as denial of employment authorization) may not be subject to appeal. In an adjudicative decision involving an exercise of discretion, the criteria that should be applied may be found in precedent decisions or in Service regulations. These regulations and decisions should always be consulted for guidance. Whenever an adverse adjudicative decision involving an exercise of discretion is made, the grounds for such denial must be given in the notice of denial. Failure to do so may result in judicial review premised on an abuse of discretion. [See *Jarecha v. INS*, 417 F. 2nd 220 (5th Cir. 1979).] (Revised DD00-06)

#### 20.10 Temporary Protected Status vs. Deferred Enforced Departure.

Section 244 of the INA contains information concerning Temporary Protected Status (TPS). The Attorney General of the United States, after consultation with appropriate agencies of the Government, may designate nationals of any foreign state (or a part of such foreign state) as deserving of TPS. In addition to nationals, the Attorney General may also include aliens who have no nationality but last resided in the designated foreign state. Aliens who have been granted TPS may not be removed from the United States during the designated protected period and qualify for work authorization. The initial period of designation is not less than 6 months and not more than 18 months. At least 60 days prior to the expiration of the designated period, the Attorney General must review the conditions of the designated state to determine if TPS is still warranted. Extensions of TPS designations normally are in 6 to 18 month increments at the Attorney Generals discretion. Applications for TPS are made on Form I-821.

(a) **Conditions that may warrant TPS designation for a particular state.** The Attorney General may grant TPS if there is an on-going armed conflict within the state that may cause harm to aliens that are returned to that state. Earthquakes, floods, droughts, epidemics or other environmental disasters that would result in temporary, but substantial, disruptions of living conditions may result in TPS designations. A foreign state being temporarily unable to handle the return of nationals of that state may also result in a designation. Granting a TPS designation to a particular state must not be contrary to the interests of the United States.

(b) TPS Impact on Removals. Aliens who have registered for TPS may not be removed from the United States. Denial of TPS benefits results in the continuation of the removal process. Aliens who have been granted TPS benefits receive an automatic stay of removal and cannot be removed until the expiration of the designated removal period. A grant of TPS does not affect the detention status of an alien who is subject to mandatory detention; however, it should be considered when determining the custody of an alien who may be releasable. Aliens who are in removal proceedings normally have their case administratively closed. The decision screen in DACS should be updated but the case remains open under docket control.

(c) Deferred Enforced Departure (DED). Unlike TPS, DED is not statutory and emanates from the United States Presidents constitutional powers to conduct foreign relations. TPS may be granted by the Attorney General but DED must come from the President in the form of an Executive Order. Presidential orders of DED are published in the Federal Register. Aliens who have been granted DED are normally granted work authorization per 8 CFR 274A.12(A)(11). Aliens who have been granted DED may not be removed from the United States until the designated period of DED has expired. If an alien falls under the protection of DED, the comment screen in DACS should be updated.

#### 20.11 Nicaraguan Adjustment and Central American Relief Act (NACARA) and Haitian Refugee Immigration Fairness Act (HRIFA).

(a) Nicaraguan Adjustment and Central American Relief Act (NACARA). The NACARA amending the INA through Public Law 105-100 was signed into law on November 19, 1997. It provides various immigration benefits and relief from removal to certain Central Americans, Cubans and nationals of former Soviet bloc countries. Specifically, the law provides that eligible Nicaraguans or Cubans can be considered for adjustment of status to that of a permanent resident alien. Additionally, certain Guatemalans, Salvadorans and nationals of former Soviet bloc countries were eligible to apply for suspension of deportation or special rule cancellation of removal under the criteria that existed for suspension of deportation prior to the enactment of IIRIRA.

(b) Nicaraguans and Cubans eligible for adjustment to lawful permanent residence (LPR). Nicaraguans or Cubans who could establish they had been physically present in the United States for a continuous period beginning not later than December 1, 1995, and ending not earlier than the date the application for adjustment is granted, and who were not inadmissible to the United States under any provision of Section 212(a) of the INA except paragraphs (4), (5), (6)(A), (7)(A) and (9)(B), could apply for adjustment of status to that of an LPR. See 8 CFR 245.13(a). A spouse, minor child, or unmarried son or daughter of an eligible principal beneficiary may also apply for benefits as a dependent provided the qualifying relationship existed when the principal beneficiary was granted adjustment of status. Under 8 CFR 245.13(c), certain waivers of inadmissibility may be available to aliens who are otherwise inadmissible under section of 212 of the Act, if applicable, in accordance with 8 CFR 212.7. Pursuant to 8 CFR 245.13(c)(2), a

regulatory waiver may be available to aliens who are inadmissible under sections 212(a)(9)(A) and 212(a)(9)(C) of the Act.

(c) Benefits for Guatemalans, Salvadorans. In order to be eligible for suspension of deportation or special rule cancellation of removal, Guatemalans and Salvadorans must demonstrate that they were ABC class members who had not been apprehended at the time of entry after December 19, 1990, or who filed an application for asylum on or before April 1, 1990, either by filing an application with the Service or filing the application with the Immigration Court and serving a copy of that application on the Service. In addition, the applicant shall not have been convicted of an aggravated felony. Such a qualifying alien may apply for special rule cancellation of removal by the process discussed below.

(d) Former Soviet Bloc Nationals. Aliens who have not been convicted of a aggravated felony, and who entered the United States on or before December 31, 1990, applied for asylum on or before December 31, 1991, and, at the time of filing the asylum application, were nationals of the Soviet Union, Russia, any republic of the former Soviet Union, Latvia, Estonia, Lithuania, Poland, Czechoslovakia, Romania, Hungary, Bulgaria, Albania, East Germany, Yugoslavia or any former state of Yugoslavia, may apply for special rule cancellation of removal by the process discussed section 20.11(e).

(e) Application Process for Special Rule Cancellation of Removal. Special rule cancellation of removal is adjudicated under the same standards that existed for suspension of deportation prior to enactment of IIRIRA. In order to be eligible, an alien may not have been convicted of an aggravated felony. A principal applicant for special rule cancellation of removal (an alien described in paragraphs (a)(1) or (a)(2) of 8 CFR 240.61) shall be presumed to have established that deportation or removal from the United States would result in extreme hardship to the applicant or to a qualifying relative. See 8 CFR 240.64(d). The Service can rebut the presumption of extreme hardship by proving that it is more likely than not that neither the applicant nor a qualifying relative would suffer extreme hardship if the applicant were deported or removed from the United States. See 8 CFR 240.64(d)(2) and (3). Where an application is filed with the Service, if the presumption of hardship is rebutted, the application can be dismissed and the case can be referred to the Immigration Court where the applicant can have another review of the application. If the Immigration Court determines that extreme hardship will not result from deportation or removal from the United States, the application will be denied. The applicant has the burden of also proving that he or she has been continuously physically present in the United States for a period of not less than 7 years immediately preceding the date the application was filed, and that s/he has been a person of good moral character during that period.

(f) Derivative Applicants for Special Rule Cancellation of Removal. An alien who is the spouse, child, or unmarried son or daughter of an individual described in 8 CFR 240.61(a)(1), (2), or (3), at the time a decision is made to suspend the deportation or cancel the removal of that individual may also apply for suspension of deportation or special rule cancellation of removal. Such derivative applicants do not get the



presumption of extreme hardship, and accordingly have the burden of proving that their deportation or removal would result in extreme hardship to themselves or to a qualifying relative. The applicant has the burden of also proving that he or she has been continuously physically present in the United States for a period of not less than 7 years immediately preceding the date the application was filed, and that s/he has been a person of good moral character during that period.

(g) Detention and Removal actions regarding NACARA applicants. Although the deadline for filing the applications expired on March 31, 2000, 8 CFR 3.43 allowed certain aliens to file a motion to reopen under section 203(c) of Public Law 105-100. The deadline for filing the motions to reopen expired on June 19, 2001. Regardless of the expired deadlines, you may encounter aliens who still have pending applications for benefits under NACARA. If you encounter an alien who claims to have a NACARA application pending you should check all applicable Service databases to determine whether the application is still pending. In addition, criminal record checks must be conducted to determine if the alien is subject to mandatory detention. If the alien has no criminal record and the NACARA application is still pending, s/he should not be detained. The following are three scenarios involving aliens whose applications have been denied and the actions that should be taken in each case:

(1) Removal proceedings have never been initiated. In this case, the alien's application has been denied and the alien should be referred to Investigations for the processing of a Form I-862, Notice to Appear.

(2) Removal proceedings were initiated at one time but were administratively closed to allow the alien an opportunity to apply for NACARA benefits. The Service should file a motion to recalendar with the Immigration Court to allow the hearing process to continue. Custody determinations should be made on each case individually using existing custody determination guidelines and the guidance found in the December 18, 1997 memorandum signed by the Executive Associate Commissioner, Office of Field Operations. See Interim Guidance Nicaraguan Adjustment and Central American Relief Act.

(3) The alien has a pre-existing Order of Removal that was held in abeyance due to the NACARA application. Custody determinations should be made on a case-by-case basis utilizing existing custody determination guidelines and the guidance found in the December 18, 1997 memorandum signed by the Executive Associate Commissioner, Office of Field Operations. The Service must complete a Form I-290(c) and serve it on the Immigration Court. The court will make the determination if the NACARA benefit was properly denied. If the court determines the benefit was properly denied, the removal actions may proceed. If the determination is made that the denial was not proper, the court will adjudicate the application.

Aliens who had been ordered deported were eligible to apply for adjustment under the NACARA. The filing of an application automatically held the removal of the alien in abeyance. If an alien was a mandatory detention case, the filing of the application did not affect the alien's custody.

Additional information about NACARA 203 rules may be found in 8 CFR 240.60 and 8 CFR 3.43. If questions arise involving NACARA applicants, consult the District Counsels office or the Examinations branch.

(h) Haitian Refugee Immigration Fairness Act (HRIFA). The HRIFA became law on October 21, 1998, under Public Law L. 105-277. Division A, Title IX of the law dealt specifically with HRIFA. Section 902 of the HRIFA provided for the adjustment of status to that of lawful permanent resident for certain Haitians. Haitians wishing to apply for adjustment of status under HRIFA must have submitted their applications on Form I-485, Application to Register Permanent Residence or Adjust Status using I-485 Supplement C, HRIFA Supplement to Form I-485 Instructions, prior to March 31, 2000. Although the deadline has passed, officers may still encounter Haitians who have applications pending for this relief.

(i) Detention and Removal actions regarding applicants for benefits under HRIFA. The removal of Haitians who were clearly eligible for adjustment under HRIFA was held in abeyance. Officers encountering aliens who claim to have a HRIFA application pending should check all applicable Service databases to determine whether the application is still pending. In addition, criminal record checks must be conducted to determine if the alien is subject to mandatory detention. If the alien has no criminal record and the HRIFA application is still pending, s/he should not be detained. The following are three scenarios involving aliens whose applications have been denied and the actions that should be taken in each case:

(1) Removal proceedings have never been initiated. In this case, the aliens application has been denied and the alien should be referred to Investigations for the processing of a Form I-862, Notice to Appear.

(2) Removal proceedings were initiated at one time but were administratively closed to allow the alien an opportunity to apply for HRIFA benefits. The Service should file a motion to recalendar with the Immigration Court to allow the hearing process to continue. Custody determinations should be made on each case individually using existing custody determination guidelines and the guidance found in the December 22, 1998 memorandum signed by the Executive Associate Commissioner, Office of Field Operations. See Interim Guidance Haitian Refugee Immigration Fairness Act of 1998 (HRIFA).

(3) The alien has a pre-existing Order of Removal that was held in abeyance due to the HRIFA application. Custody determinations should be made on a case-by-case basis utilizing existing custody determination guidelines and the guidance found in the December 22, 1998, memorandum signed by the Executive Associate Commissioner, Office of Field Operations. The Service completes a Form I-290(c) in order to certify the denial of HRIFA benefits to the Immigration Court. The court then determines whether HRIFA adjustment was properly denied.

The filing of an application automatically held the removal of the alien in abeyance. If an alien was a mandatory detention case, the filing of the application did not affect the aliens

custody. Additional information about HRIFA rules may be found in Section 902 of the HRIFA and 8 CFR 245.15. If questions arise involving HRIFA applicants, consult the District Counsels office or the Examinations branch.

#### 20.12 Voluntary Departure.

Voluntary departure may be granted by the INS or an immigration judge under the conditions specified in section 240B of the Immigration and Nationality Act. See Chapter 13 of this Manual for an explanation of voluntary departure.

## **Chapter 21 Legal Proceedings**

### 21.1 Executive Office for Immigration Review (EOIR)

### 21.2 Board of Immigration Appeals (BIA)

### 21.3 Immigration Courts

### 21.4 Relief from Removal

### 21.5 Motions to Reopen; Motions to Reconsider

### 21.6 Motions to Recalendar

### 21.7 Stays of Removal

### 21.8 Office of Immigration Litigation

### 21.9 Federal Court Procedures

References:

INA: 101(b)(4), 208, 235, 236, 240, 240B, 242

Regulations: 8 CFR 3, 103.5, 208, 235, 236, 240, 241

Other: BIA Practice Manual

### 21.1 Executive Office for Immigration Review (EOIR)

(a) EOIR Introduction. The Executive Office for Immigration Review (EOIR) was created on January 9, 1983, through an internal Department of Justice (DOJ) reorganization that combined the Board of Immigration Appeals (BIA) with the immigration judge function previously performed by the Immigration and Naturalization Service (INS). In addition to establishing EOIR as a separate agency within DOJ, this

reorganization made the immigration courts independent of the INS, the agency charged with enforcement of federal immigration laws.

EOIRs Office of the Chief Immigration Judge supervises 209 immigration judges located in 51 courts throughout the United States. Eighteen of the 51 immigration courts are located in either detention centers or prisons. Additionally, immigration judges travel to more than 100 other hearing locations to conduct proceedings. At each proceeding, a trial attorney represents the United States government, while the respondent alien appears on his or her own behalf or retains an attorney at no expense to the government. An immigration judge decides if the alien is removable as charged. An immigration judges decision is administratively final, unless appealed or certified to the BIA.

The BIA, located in Falls Church, VA, conducts appellate review of decisions rendered by immigration judges. Another EOIR component, the Office of the Chief Administrative Hearing Officer (OCAHO), resolves cases concerning employer sanctions, immigration-related employment discrimination and document fraud. For additional information, refer to the EOIR website at: [www.usdoj.gov/eoir](http://www.usdoj.gov/eoir)

(b) EOIR Process. Aliens charged with violating the immigration laws are issued a Notice to Appear (NTA). During court proceedings, aliens appear before an immigration judge and either contest or concede the charges. During some proceedings, the judge may adjourn and set a continuance date for various reasons, such as allowing the alien time to obtain representation or to file an application for relief. After hearing the case, the judge renders a decision. Proceedings may also be adjourned for other reasons, such as administrative closures and changes of venue.

Additionally, immigration judges consider other matters, such as bonds and motions. If detained, the alien may be required to post a bond before release. If the alien disagrees with the bond amount set, the alien has the right to ask an immigration judge to redetermine the bond amount. During bond redetermination hearings, judges may decide to raise, lower, or maintain the original bond amount. In some cases, the judge will eliminate the bond completely, or change any of the bond conditions over which the immigration court has authority. Aliens may also request by motion the reopening or reconsideration of a case previously heard by an immigration judge. Generally, aliens file such motions because of changed circumstances. Denial of a motion may be appealed to the BIA or to the federal courts. The Government may also file motions to reopen or reconsider a case.

## 21.2 Board of Immigration Appeals (BIA)

(a) Role. The Board of Immigration Appeals is the highest administrative tribunal on immigration matters in the United States. The BIA is responsible for applying the immigration and nationality laws uniformly throughout the United States. Accordingly, the BIA has been given nationwide jurisdiction to review the orders of immigration judges and certain other decisions described in 8 CFR 1003.1, and to provide guidance to the immigration judges, and others, through published decisions. The BIA is tasked to

resolve the questions before it in a manner that is impartial and consistent with the Immigration and Nationality Act and regulations, and to provide clear and uniform guidance for immigration officers, immigration judges, and the general public on the proper interpretation and administration of the Act and its implementing regulations. [See 8 CFR 1003.1(d)(1).]

The BIA is also responsible for the recognition of organizations and the accreditation of representatives wishing to appear before the INS, the Immigration Courts, and the BIA.

(b) Location within the federal government. The BIA is a component of the EOIR and, along with the Office of the Chief Immigration Judge (OCIJ) and the OCAHO, operates under the supervision of the Director of the Executive Office for Immigration Review, within the Department of Justice. [See 8 CFR 1003.0(a) and 1003.1.]

(c) Relationship to the Immigration Courts. The OCIJ oversees the administration of the Immigration Courts nationwide and exercises administrative supervision over immigration judges. The immigration judges, as independent adjudicators, make determinations of removability, deportability, and inadmissibility, and adjudicate applications for relief. The BIA, in turn, reviews the decisions of the Immigration Courts. The decisions of the BIA are binding on the Immigration Courts, unless modified or overruled by the Attorney General or a federal court.

(d) Jurisdiction. The BIA generally has the authority to review appeals from the following:

decisions of immigration judges in removal, deportation, and exclusion proceedings (with some limitations on decisions involving voluntary departure, pursuant to 8 CFR 1003.1(b)(1)-(3));

decisions of immigration judges pertaining to various forms of relief from removal or deportation identified at 8 CFR 1003.1(b);

decisions of immigration judges on motions to reopen in absentia proceedings;

some decisions pertaining to bond as provided in 8 CFR 236, subpart A;

decisions on family-based immigrant petitions, the revocation of family-based immigrant petitions, and the revalidation of family-based immigrant petitions (except orphan petitions);

decisions regarding waivers of inadmissibility for nonimmigrants under section 212(d)(3) of the Act;

decisions of immigration judges in rescission of adjustment of status cases, as provided in 8 CFR Part 246.

(e) Scope of review. The BIA may review questions of law, discretion, and judgment in appeals of immigration judge decisions de novo. The BIA does not engage in de novo review of facts in appeals of immigration judge decisions. The BIA reviews immigration judges findings of fact, including findings as to credibility, only to determine whether the findings of fact are clearly erroneous. The BIA may review all issues arising in appeals from immigration officer decisions de novo. [See 8 CFR 1003.1(d)(3)].

### 21.3 Immigration Courts

(a) Immigration Court Decisions. As a general matter, immigration judges decide issues of removability, deportability, and admissibility, and adjudicate applications for relief. The BIA has broad authority to review the decisions of immigration judges. See 8 CFR 1003.1(b). While the Immigration Courts and the BIA are both components of the Executive Office for Immigration Review, the two are separate and distinct entities. Thus, administrative supervision of immigration judges is vested in the Office of the Chief Immigration Judge, not the BIA.

After a hearing, the immigration judge will either render an oral decision or reserve the decision and issue it at a later date. Decisions may include a determination on whether the Government should remove the alien from the United States or whether the alien is to be granted relief.

During immigration court proceedings, some aliens are represented by a private attorney or an authorized representative while others represent themselves. Before representing an alien, attorneys or accredited representatives must file a Notice of Appearance, Form EOIR-28 with the Immigration Court. For those aliens without counsel, the immigration judge will explain their rights.

(b) Failures to Appear. When an alien fails to appear (FTA) for a hearing, an immigration judge will usually conduct an in absentia (in absence of) hearing and order the alien removed from the United States. Before an immigration judge orders the alien removed in absentia, the trial attorney must establish by clear, unequivocal, and convincing evidence that proper notice of the hearing was provided to the alien and that the alien is removable.

### 21.4 Relief from Removal

There are various forms of relief from removal for which aliens may apply. For a general overview of the various forms of relief from removal see Chapter 20 of this field manual.

### 21.5 Motions to Reopen; Motions to Reconsider

(a) Form and filing requirements. There is no official form for filing a motion before the BIA. Motions should not be filed on a Notice of Appeal, Form EOIR-26, which is used exclusively for the filing of appeals. Motions and supporting documents must comply with the general rules and procedures for filing. These are described in the BIA Practice

Manual, Chapter 5.2(b). The BIA prefers that motions and supporting documents be assembled in a certain order. See BIA Practice Manual, Chapter 3.3(c)(i)(B).

(b) Motion to reopen. A motion to reopen asks the BIA to reopen proceedings in which the BIA has already rendered a decision in order to consider new facts or evidence in the case. See BIA Practice Manual, Chapter 5.6.

(c) Motion to reconsider. A motion to reconsider either identifies an error in law or fact in a prior BIA decision or identifies a change in law that affects a prior BIA decision and asks the BIA to re-examine its ruling. A motion to reconsider is based on the existing record and does not seek to introduce new facts or evidence. When a case is reviewed on reconsideration, the administrative body, in effect, places itself back in time and considers the case on the record as though a decision had never been entered. *Matter of Cerna*, 20 I&N Dec. 399 (BIA 1991), *affd* 979 F.2d 212 (11th Cir. 1992). See BIA Practice Manual, Chapter 5.7.

Note: Motions filed by the Government are not always subject to the same rules as those filed by the alien. For cases in removal proceedings, the Government may not be subject to time and number limits on motions to reopen. See 8 CFR 1003.2(c)(2) and (3). For cases brought in deportation or exclusion proceedings, the Government is subject to the time and number limits on motions to reopen, unless the basis of the motion is fraud in the original proceeding or a crime that would support termination of asylum. See 8 CFR 1003.2(c)(3)(iv).

Note: If a motion involves a detained or incarcerated alien, the motion should clearly state that information. The BIA recommends that the cover page to the motion be prominently marked "DETAINED" in the upper right corner and highlighted, if possible.

(d) Bases for Denial of Motions. Motions may be denied for the following reasons:

(1) Motions to Reopen:

Where prima facie eligibility for the relief sought has not been established. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981); *INS v. Abudu*, 485 U.S. 94 (1988); *Shaar v. INS*, 141 F.3d 953 (9th Cir. 1998).

Where the evidence submitted was not previously unavailable or is not material. See 8 CFR 1003.2(c).

If the relief sought is discretionary, where the BIA finds that a favorable exercise of discretion is not warranted. *INS v. Doherty*, 502 U.S. 314 (1992); *Matter of Coelho*, 20 I&N Dec. 464 (BIA 1992).

(2) Motions to Reopen or Motions to Reconsider:

The motion is untimely filed. See *Matter of Beckford*, 22 I&N Dec. 1216 (BIA 2000) (where the basis of an untimely motion is the failure of the INS to prove removability, alien must show a substantial likelihood that the result would be different and prove that he is not removable) and *Matter of Susma*, 22 I&N Dec. 947 (BIA 1999) (motion to reopen must be filed within 90 days of the final administrative/BIA decision; time is not counted from the denial of a petition for review).

(e) In absentia proceedings. There are special rules pertaining to motions to reopen following an alien's failure to appear for a hearing. An alien who wishes to file a motion to reopen in response to an immigration judge's removal order rendered after the alien failed to appear at his or her hearing, must file the motion to reopen directly with the immigration judge, explaining the reasons for his or her failure to appear. The alien may not file an appeal directly with the BIA. *Matter of Guzman*, 22 I&N Dec. 722 (BIA 1999). Such motions are subject to strict deadlines under certain circumstances discussed at 8 CFR 1003.2(c)(3)(i)-(iii).

(f) Joint motions; BIA motions. Motions that are agreed upon by all parties and are jointly filed are not limited in time or number. See 8 CFR 1003.2(c)(3)(iii). The BIA may reopen a case on its own at any time.

(g) Motions involving criminal convictions. Any motion that alleges that a criminal conviction has been overturned, vacated, modified, or disturbed in some way must be accompanied by clear, corroborating evidence that the conviction has actually been disturbed. An intention to seek post-conviction relief, mere eligibility for post-conviction relief, or pending review of a criminal conviction is generally insufficient to reopen proceedings. Parties should be mindful of the numerical limit on motions.

## 21.6 Motions to Recalendar

When proceedings have been administratively closed, and a party wishes for those proceedings to be placed back on the Immigration Courts docket, the proper motion is a motion to recalendar, not a motion to reopen. A motion to recalendar should provide the date and the reason for the closure. A copy of the closure order should be attached, if available. Motions to recalendar should be properly filed, clearly captioned, and comply with the general motion requirements. Motions to recalendar are not subject to time and number restrictions.

## 21.7 Stays of Removal

[Effect of stays on removal period is reserved.]

[For general overview of stays See Chapter 20.7 of this field manual.]

## 21.8 Office of Immigration Litigation



The Office of Immigration Litigation (OIL) conducts civil trials and appellate litigation in the federal courts and represents the United States in civil suits brought against the immigration bureaus, the State Department, and other agencies responsible for the movement of citizens and aliens across U.S. borders. OIL is a component of the Civil Division of the Department of Justice. It is not a component of the EOIR and is not affiliated with the BIA.

## 21.9 Federal Court Procedures

(a) Federal District Courts. Congress has divided the country into ninety-four federal judicial districts. In each district there is a U.S. District Court. The U.S. District Courts are the federal trial courts -- the places where federal cases are tried, witnesses testify, and juries serve. Within each district is a U.S. Bankruptcy Court, a part of the district court that administers the bankruptcy laws.

Congress uses state boundaries to help define the districts. Some districts cover the entire state, like Idaho. Other districts cover just part of a state, like the Northern District of California. Congress placed each of the ninety-four districts in one of twelve regional circuits. Each circuit has a court of appeals. If you lose a case in a district court, you can ask the court of appeals to review the case to see if the district judge applied the law correctly. There is also a U.S. Court of Appeals for the Federal Circuit, whose jurisdiction is defined by subject matter rather than by geography. It hears appeals from certain courts and agencies, such as the U.S. Court of International Trade, the U.S. Court of Federal Claims, and the U.S. Patent and Trademark Office, and certain types of cases from the district courts (mainly lawsuits by people claiming their patents have been infringed).

Note: Judicial Review of Final Orders. A court may review a final order of removal only if:

(1) the alien has exhausted all administrative remedies available to the alien as of right, and

(2) another court has not decided the validity of the order, unless the reviewing court finds that the petition presents grounds that could not have been presented in the prior judicial proceeding or that the remedy provided by the prior proceeding was inadequate or ineffective to test the validity of the order. [See section 242 of the Act].

(b) Circuit Court of Appeals. A court of appeals hears appeals from the district courts located within its circuit, as well as appeals from decisions of federal administrative agencies. In addition, the Court of Appeals for the Federal Circuit has nationwide jurisdiction to hear appeals in specialized cases, such as those involving patent laws and cases decided by the Court of International Trade and the Court of Federal Claims.

(c) United States Supreme Court. The Supreme Court of the United States is the highest court in the nation. Its major function is clarifying the law in cases of national importance

or when lower courts disagree about the interpretation of the Constitution or federal laws.

The Supreme Court does not have to hear every case that it is asked to review. Each year, losing parties ask the Supreme Court to review about 7,000 cases. These cases come to the Court as petitions for writ of certiorari. The court selects only about 100 of the most significant cases to review. ([www.fjc.gov](http://www.fjc.gov)).

The decisions the Supreme Court hands down on these cases set precedents for the interpretation of the Constitution and federal laws, precedents that all other courts, both state and federal, must follow.

The power of judicial review makes the Supreme Court's role in our government vital. Judicial review is the power of any court, when deciding a case, to declare that a law passed by a legislature or an action of an executive branch officer or employee is invalid because it is inconsistent with the Constitution. Although district courts, courts of appeals, and state courts can exercise the power of judicial review, their decisions about federal law are always subject to review by the Supreme Court on appeal. When the Supreme Court declares a law unconstitutional, however, its decision can only be overruled by a later decision of the Supreme Court or by an amendment to the Constitution. Seven of the twenty-seven amendments to the Constitution have invalidated decisions of the Supreme Court. However, most Supreme Court cases don't concern the constitutionality of laws, but the interpretation of laws passed by Congress.

The Supreme Court consists of a Chief Justice and eight associate justices. Like federal court of appeals and district judges, the justices are appointed by the President with the advice and consent of the Senate. However, unlike the courts of appeals, the Supreme Court never sits in panels. All nine justices hear every case, and cases are decided by a majority ruling.

(1) Writs of Certiorari. An order by a court to a lower court requiring that the lower court produce the records of a particular case tried so that the reviewing court can inspect the proceedings and determine whether there have been any irregularities. Almost all parties seeking review of their cases in the U.S. Supreme Court file a petition for a writ of certiorari. The Supreme Court issues a limited number of writs, thus indicating the few cases it is willing to hear among the many in which parties request review.

(2) Writs of Habeas Corpus. A writ of habeas corpus is a civil remedy which permits a person in custody to challenge the constitutionality of his or her conviction or sentence. The court reviews whether the petitioner is in custody in violation of the Constitution or laws or treaties of the United States. [See section 236A of the Act].

Application: Habeas corpus proceedings may be initiated by an application filed with the Supreme Court, any justice of the Supreme Court, any circuit judge of the United States Court of Appeals for the District of Columbia Circuit, or any other district court with proper jurisdiction to hear the case.

Habeas Cases and POCR Reviews. For all Writs of Habeas Corpus filed in the United States District Courts for cases that are within the 180-day period, the field will coordinate with the United States Attorneys Office, Office of Immigration Litigation, and General Counsel. Cases beyond the 180-day period will be coordinated by HQCDU.

Note: Please also refer to Chapter 17: Post Order Custody Reviews, in this field manual.

## **II. Detention**

### **Chapter 25: Detention Facilities**

25.1 General

25.2 Types of Detention Facilities

25.3 Contract Jail Space

25.4 Contract Detention Space

25.5 Facility Detention Reviews

References:

Detention Management Control Program

Immigration and Naturalization Service Acquisition Procedures - INSAP-04-02, Appendix 25-1.

Regulations:

Enforcement Standards; AM 4.1.500

25.1 General.

Enforcement of the Immigration and Nationality Act often involves detaining aliens subject to removal from the United States. The Service operates or uses several types of detention facilities for this purpose.

25.2 Types of Detention Facilities.

The following serve as detention facilities:

Service Processing Centers (SPCs), owned and operated by the Service.

Contract Detention Facilities (CDFs), contractor-owned; operated jointly with the Service.

Staging facilities owned and operated by the Service.

Federally owned; operated jointly with the U.S. Bureau of Prisons.

Contractor-owned; operated jointly with the U.S. Bureau of Prisons.

These facilities provide housing for persons taken into custody pending removal proceedings or release on bond or personal recognizance. The detention facility is responsible for the secure detention and personal welfare of the individual. This includes, among other things, food, housing, medical and dental care, clothing, and reasonable recreational facilities.

SPCs use contract guard services to perform basic custodial duties.

CDFs provide detention services under competitively bid contracts awarded by the INS. With the exception of facilities jointly operated with the Bureau of Prisons, all facilities used by INS for the detention of aliens must adhere to the INS National Detention Standards (NDS).

Staging Facilities are temporary housing facilities which serve as central collection points for the Detention and Removal program. Staging facility personnel receive or pick up aliens apprehended by DRO and other INS programs as well as other federal, state and local law enforcement agencies and correctional facilities. Staging facility personnel process detainees into Service custody, classifying and assigning them to detention facilities. DEOs from staging facilities transport detainees to EOIR, federal and state courts, and consulates. Some staging facilities have travel offices to prepare notifications and schedule removals, including escort arrangements. Staging facility supervisors coordinate all JPATS and interdistrict transfers.

### 25.3 Contract Jail Space.

In addition to the detention facilities identified in section 25.2, above, the Service also houses detainees in state, county and local jails. The Service may use any jail that has signed an Intergovernmental Service Agreement (IGSA)\* with either the INS or the U.S. Marshals Service (USMS)\*. An IGSA is a contract between INS and a state, county or municipal government obligating the INS to reimburse the other agency for the costs of housing INS detainees. IGSA facilities house most of INS detainees. (See Immigration and Naturalization Service Acquisition Procedures - INSAP-04-02, Appendix 25-1.)

### 25.4 Contract Detention Space.

The manager or warden of a state or local facility makes available to the INS a number of beds on a per diem basis. Although day-to-day custodial care and control is the manager

or wardens responsibility, every facility housing INS detainees for more than 72 hours must comply with the NDS.

In some facilities, a permanent INS presence handles alien transportation and matters not strictly custodial in nature. In others, where INS use of the facility is intermittent or of such a low volume that a permanent Service presence would not be cost-effective, DRO handles administrative matters. See [Appendix 25-2](#).

## 25.5 Facility Detention Reviews.

(a) Facility Reviews. DRO regularly monitors facilities that house INS detainees for compliance with the NDS. The Detention Management Control Program (DMCP) guides the review process, setting forth the requirements and responsibilities of Headquarters, Regional, District and facility staff charged with implementing the NDS. The DCMP maintains all jail inspections results along with the distribution and notification protocol.

INS will not enter into a new IGSA or piggyback on a USMS contract before conducting a detention review and evaluating the facility's compliance with the national standards.

Officers from Headquarters conduct the reviews of SPCs and CDFs. Each District must inspect the IGSA facilities under its jurisdiction for compliance with the NDS.

Detention reviews for IGSA's fall into two categories: jails or other facilities used to house INS detainees for a period of 72 hours or more and jails or facilities used for less than 72 hours. Since the standards do not apply to under 72 hour facilities, this type of inspection is an abbreviated version that concentrates on the basic conditions of confinement.

The INS will not house detainees in any IGSA facility lacking an approved, current inspection report.

(b) Monitoring Instruments. Jail reviewers use the Review Guidelines that correspond to each detention standard to document their findings. They record the inspection results on Inspection Form, G-324a.

(c) Jail Inspections Procedures. The annual inspection cycle begins with a Management Assessment. During the Management Assessment, DRO Headquarters officials working with managers in the field base the priorities for the next years inspections on operational developments and issues that have recently emerged. They then update the review guidelines that serve as guidance for individual facility reviews. At that point, the Review Authority (see paragraph d, below) establishes review teams and publishes a schedule of facility reviews. The review team prepares an inspection report on each facility providing the Officer in Charge (OIC) with a copy. The OIC must then address any deficiencies noted in the review. Minor deficiencies may be corrected through immediate action while other more complex deficiencies must be addressed through a Plan of Action. The file

remains open until the reviewers find that all deficiencies have been corrected and HQDRO concurs.

(d) **Review Teams.** The Deputy Executive Associate Commissioner, Office of Detention and Removal, serves as the Review Authority (RA), who every year requests a list of potential jail reviewers from each regional director.

Every reviewer must complete the facilities inspection and standards training offered by HQDRO at regular intervals. Reviewers must attend refresher training at intervals of three years or less to ensure consistency and uniformity among reviewers. The Director, Detention and Transportation Division, manages the reviewer training and is responsible for certifying reviewers qualifications and attendance at refresher programs.

## **Chapter 26: Detainee Services**

References:

INA: 236

Regulations: 8 CFR 236.2, 236.3

Bureau of Prisons Program Statements and American Correctional Association 3rd Edition Standards for Adult Local Detention Facilities.

Chapter 26, Detainee Services, is wholly contained in the Detention Operations Manual, M-482, Appendix 26-1 of this Manual. Below are the titles of Detainee Services, which are directly linked to the specified standard in the Detention Standards of the Detention Operations Manual. The Detention Operations Manual can also be found on the U.S. Immigration and Customs Enforcement (ICE) Web Site:

(b)(2)High

The Detention Standards establish uniform policies and procedures for the safe, secure, and humane treatment of foreign nationals in ICE custody. Issues range from visitation policies to procedures for handling detainee grievances. Each standard articulates ICE's expectations applicable to every facility housing ICE detainees.

Implementation of the Detention Standards is mandatory for all ICE Service Processing Centers (SPCs), Contract Detention Facilities (CDFs), and state and local government facilities (IGSA facilities) that house ICE detainees for more than 72 hours.

Detainees Services

1. Access to Legal Material
2. Admission and Release

3. Correspondence and Other Mail
4. Detainee Classification System
5. Detainee Grievance Procedures
6. Detainee Handbook
7. Food Service
8. Funds and Personal Property
9. Group Presentation on Legal Rights
10. Issuance and Exchange of Clothing, Bedding, and Towels
11. Marriage Requests
12. Non-Medical Emergency Escorted Trip
13. Recreation
14. Religious Practices
15. Staff-Detainee Communications
16. Telephone Access
17. Visitation
18. Voluntary Work Program

## **Chapter 27: Detainee Health Services**

### References:

U.S. States Public Health Division of Immigration Health Services Policy and Procedures Manual, National Commission on Correctional Health Care, Joint Commission on Ambulatory Health Care Organizations and American Correctional Association 3rd Edition Standards for Adult Local Detention Facilities.

Chapter 27, Detainee Health Services, is wholly contained in the Detention Operations Manual, M-482, Appendix 26-1 of this Manual. Below are the titles of Detainee Health Services, which are directly linked to the specified standard in the Detention Standards of the Detention Operations Manual. The Detention Operations Manual can also be found

on the U.S. Immigration and Customs Enforcement (ICE) Web Site:

(b)(2)High

The Detention Standards establish uniform policies and procedures for the safe, secure and humane treatment of foreign nationals in ICE custody. Issues range from hunger strikes to procedures for handling a detainee with a terminal illness. Each standard articulates ICE's expectations applicable to every facility housing ICE detainees.

Implementation of the Detention Standards is mandatory for all ICE Service Processing Centers (SPCs), Contract Detention Facilities (CDFs), and state and local government facilities (IGSA facilities) that house ICE detainees for more than 72 hours.

Detainee Health Services

1. Hunger Strikes
2. Medical Care
3. Suicide Prevention and Intervention
4. Terminal Illness, Advanced Directives, and Death

## **Chapter 28: Security and Control**

References:

Bureau of Prisons Program Statements, Occupational Safety and Health Administration Regulations and American Correctional Association 3rd Edition Standards for Adult Local Detention Facilities.

Chapter 28, Security and Control, is wholly contained within the Detention Operations Manual, M-482, Appendix 26-1 of this Manual. Below are the titles of Security and Control, which are directly linked to the specified standard in the Detention Standards of the Detention Operations Manual. The Detention Operations Manual can also be found on the U.S. Immigration and Customs Enforcement (ICE) Web Site:

(b)(2)High

The Detention Standards establish uniform policies and procedures for the safe, secure and humane treatment of foreign nationals in ICE custody. Issues range from the appropriate use of force to procedures for handling and disposing of contraband. Each standard articulates ICE's expectations applicable to every facility housing ICE detainees.

Implementation of the Detention Standards is mandatory for all ICE Service Processing Centers (SPCs), Contract Detention Facilities (CDFs), and state and local government facilities (IGSA facilities) that house ICE detainees for more than 72 hours.



## Security and Control

1. Contraband
2. Detention Files
3. Detainee Searches [Reserved]
4. Detainee Transfers
5. Disciplinary Policy
6. Emergency Plans
7. Environmental Health and Safety
8. Hold Rooms in Detention Facilities
9. Key and Lock Control (Security, Accountability, and Maintenance)
10. Population Counts
11. Post Orders
12. Security Inspections
13. Special Management Unit (Administrative Segregation)
14. Special Management Unit (Disciplinary Segregation)
15. Tool Control
16. Transportation (Land Transportation)
17. Use of Force

## **III. Property Management: Materials, Tools and Equipment**

### **Chapter 30: Detainee Property Management**

#### Detention Standards

### **Chapter 31: Firearms, Nondeadly Force and Restraining Devices**

31.1 Firearms

31.2 Nondeadly Force

31.3 Restraining Devices

31.4 Protocol for Reporting Firearms Discharges

References:

INA: 287

Other: Chapter 15 of the Personal Property Handbook (M-429); INS Firearms Policy; INS Enforcement Standard, Use of Restraints

31.1 Firearms

(a) Interim ICE Firearms Policy.

I have signed and authorized the release of the interim U.S. Immigration and Customs Enforcement (ICE) Firearms Policy. This document shall serve an interim firearms policy for ICE and shall supersede all legacy agency firearms policies, becoming effective on July 7, 2004. This policy was the result of a great amount of dedication, effort and work by many representatives from each ICE operational component and the ICE National Firearms and Tactical Training Unit (NFTTU). The interim ICE Firearms Policy retains the best of each legacy agency's policy and national firearms program. It is intended to create a strong and comprehensive policy to unify our many operational elements in the critical area of firearms and the related disciplines.

The NFTTU shall electronically distribute this interim policy to all of the ICE Senior Firearms Instructors (SFIs) and post it on the NFTTU intranet website (b)(2)High for immediate access and distribution to all ICE armed officers. The NFTTU has provided interim policy training to over two hundred and fifty (250) ICE SFIs as of the release of this important interim policy. All ICE armed officers are required to fully read and understand the new policy prior to the July 7, 2004 implementation date.

Program offices should commence familiarization to the new course of fire beginning with the qualification period in July of 2004. ICE armed officers shall have two (2) quarters to transition to the new course of fire. Effective January 1, 2005, this new course of fire will become mandatory for all ICE armed officers. The new ICE QT targets may be ordered from (b)(2) high for practice and preparation for the transition. It is anticipated that in the future these targets will be available through NFTTU. (b)(2)High The NFTTU will provide additional guidance to the SFIs and field to assist in the implementation of this policy.

The implementation of this interim policy is a significant undertaking and is a milestone in the progress ICE is making in the establishment of our new agency. If you have any questions or require assistance in implementing this new policy in any way, please contact the NFFTU at [NFFTU@dhs.gov](mailto:NFFTU@dhs.gov).

Signed: July 7, 2004

Michael J. Garcia

Assistant Secretary

(b) Officers entering on duty after July 7, 2004. Any officer entering on duty after the issuance of this Interim ICE Firearms Policy (Policy) shall be provided a copy of the Policy and shall familiarize themselves with the provisions therein prior to taking any action operationally as an armed ICE agent or officer. The Senior Firearms Instructor in each office is responsible for ensuring all new officers either have been provided a copy of the Policy during training at the ICE Academy or upon returning from successful completion of the ICE Academy and prior to any operational activation.

(c) Provisions. The Policy provides the statutory authority to carry firearms, identifies who is authorized to carry, what to carry and when to carry. It provides guidance on proficiency and training as well as ammunition and firearms accountability, maintenance, inspection and repair.

(d) Officer Inventory Responsibilities. Individual officers are required annually to conduct an inventory of their firearm(s) and soft body armor. As such, all officers are required to obtain a PICS password and access to the Automated Inventory and Maintenance System (AMIS) for this purpose. Officers who have received their access will enter AMIS on a monthly basis in order to keep their password active in order to successfully conduct their inventory as required.

31.2 Nondeadly Force [Reserved]

31.3 Restraining Devices

The INS policy concerning the use of restraints is described in INS Enforcement Standard, Use of Restraints [Appendix 16-4](#) of this manual.

This standard applies to all ICE personnel who apprehend, take into custody, or are otherwise involved in the detention of individuals in Service custody. The standard includes a description of ICE policy concerning principles governing the application of restraints, responsibility for determining risks of applying restraints, approved restraint equipment and after-action review requirements.

31.4 [Protocol for Reporting Firearms Discharges](#)

## Chapter 32: Government Vehicles

### 32.1 General

### 32.2 Agency Vehicles

### 32.3 Vehicle Acquisition, Maintenance, and Disposal

### 32.4 Vehicle Usage and Reporting Procedures

### 32.5 Pursuit and Emergency Vehicles

#### References

Regulations: 8 CFR 287.8; 41 CFR 102-34 ([www.gpoaccess.gov/ecfr/](http://www.gpoaccess.gov/ecfr/) must have Internet to access)

Other: Detention Standard: Transportation (Land Transportation), Chapter 36 of the Detention Operation Manual (M-482) [Appendix 26-1]; Motor Vehicle Safety, Chapter 13 of the INS Environmental Occupational Safety and Health Program Requirements, AM 1.5.215; Vehicles, Chapter 18 of the Personal Property Operations Handbook (M-429) (b)(2)High

(b)(2)High; Personal Property Management, AM 2.2.101; Home-To-Work Use Of Government-Operated Vehicle, AM 2.2.107.

### 32.1 General.

All Detention and Removal personnel must be familiar with and abide by a wide variety of regulations and policies that relate to government vehicles. There are explicit requirements concerning:

Use of government vehicles to transport detained aliens

Safe operation of government vehicles

Proper authorization to use government vehicles

Acquisition, maintenance and disposal of government vehicles

Preparation of reports concerning government vehicle usage and maintenance

This chapter is intended to provide a central location from which to access these regulations, policies and procedures.

### 32.2 Agency Vehicles.

Detention and Removal personnel currently utilize several types of secure and non-secure vehicles to accomplish a variety of tasks. The HQDRO authorized Vehicle Ordering Menu can be found as Appendix 32-1 of this manual. Additional information concerning fleet management can be found at the INS Office of Administration, Logistics Division, Intranet site (b)(2)High. The Logistics Division Intranet site can also be used to access Vehicles, Chapter 18 of the Personal Property Operations Handbook (M-429), which is currently under development. Chapter 18 may also be accessed directly at (b)(2)High

(b)(2)High

Additional information specific to INS use-of-vehicle requirements is being prepared for inclusion in Personal Property Management, AM 2.2.101 and Home-To-Work Use Of Government-Operated Vehicle, AM 2.2.107. Government-wide regulations concerning use of vehicles are contained in 41 CFR 102-34, which may be accessed via the Internet at (b)(2)High

(b)(2)High

(b)(2)High. 41 CFR 102-34 contains an abundance of information related to government vehicles, arranged in a question-and-answer format. It includes information on such issues as:

Use of a government vehicle for transportation between residence and duty station

What constitutes official use of a government vehicle

The relevance of state and local laws to government-operated vehicle usage

Vehicle maintenance program requirements

Obtaining forms related to use of a government vehicle

Standards for proper procedures to follow when transporting detained aliens in government vehicles are described in Detention Standard: Transportation (Land Transportation), Chapter 36 of the Detention Operation Manual (M-482)[Appendix 26-1]. Any individual engaged in the transportation of detainees must be familiar with and adhere to the requirements described in that document. Chapter 36 contains, among other items:

A list of forms, certificates and licenses required

A description of safety procedures to be followed

An explanation of reports to be completed.

An inventory of equipment that is required to be in each vehicle

Additional safety requirements are described in Motor Vehicle Safety, Chapter 13 of the INS Environmental Occupational Safety and Health Program Requirements, Motor Vehicle Safety, AM 1.5.215. This document also describes procedures to be followed in the event of a vehicle accident. Note that, at a minimum, each vehicle is to be equipped with a fire extinguisher, appropriate warning flares or reflectors, and a first aid kit.

### 32.3 Vehicle Acquisition, Maintenance, and Disposal.

Details relating to acquisition (whether an initial purchase, a replacement or an enhancement to the existing fleet), maintenance and disposal of Service vehicles can be found in Chapter 18 of the Personal Property Operations Handbook (M-429) once completed. Additional information can be accessed at the INS Office of Administration, Logistics Division, Intranet site (b)(2)High. Also see Vehicle Ordering Menu, in Appendix 32-1 of the Field Manual.

### 32.4 Vehicle Usage and Reporting Procedures.

Personnel using a government vehicle are required to maintain several reports. Form G-886, Vehicle Utilization Log, must be completed to document:

The name of the operator of the vehicle

The purpose for which the vehicle is being utilized

The method used to authorize the operator to use the vehicle (for example,

Form G-391, Official Detail; Form G-250, Travel Request Authorization; or

Form G-291, Authorization for Official Use of Government-Owned Automobile

During Other Than Normal Duty Hours)

The place the travel originates and the destination

The starting and ending mileage, date, and time

Form G-205, Government Vehicle Recurring Cost Record, is used to record the accumulation of fuel costs and certain other minor costs incurred in the operation of a vehicle. At the end of each month, the completed Form G-205 is to be submitted to the employee assigned to the task of entering these figures into the Vehicle Accounting and Reporting System (VARS). There are additional forms to be used in recording costs incurred for vehicle maintenance and other items, that must also be entered into VARS. See Chapter 18 of the Personal Property Operations Handbook (M-429).

Each vehicle is required to have onboard forms available for completion in the event of a motor vehicle accident. These include Form SF-91, Operators Report of Motor Vehicle

Accident and Form SF-91A, Investigation Report of a Motor Vehicle Accident. For detailed information on what to do in the event of a motor vehicle accident, see Motor Vehicle Safety, Chapter 13 of the INS Environmental Occupational Safety and Health Program Requirements, AM 1.5.215.

### 32.5 Pursuit and Emergency Vehicles.

A vehicle pursuit is generally described in 8 CFR 287.8(e) as an active attempt to apprehend fleeing suspects who are attempting to avoid apprehension. The only Service personnel authorized to initiate a vehicular pursuit are Border Patrol Agents and supervisory Border Patrol personnel. Accordingly, Detention and Removal personnel are precluded by regulation from initiating a vehicle pursuit, unless specifically authorized and designated by the Commissioner as needing this authority in order to effectively accomplish their mission. Should this authority and designation ever be granted, the requirements of 8 CFR 287.8(e) would have to be thoroughly reviewed and adhered to.

## **Chapter 33 Communications Equipment**

### 33.1 General

### 33.2 Types of Communications Equipment

### 33.3 Radio Use

### 33.4 Agency-Authorized Phonetic Alphabet and 10 Code

### 33.5 Disposal of Communications Equipment.

### 33.6 Cellular Telephones and Paging Devices

### 33.7 Servicewide E-Mail System (cc:Mail)

### 33.8 Registration With National Law Enforcement Communications Center (NLECC)

References:

Regulations: none

Other: Part III, Chapter 36, of the Detention Standard: Transportation (Land Transportation) [contained in Appendix 26-1 of this manual]. Chapter 16 of the Personal Property Operations Handbook (M-429). AM 3.2.213, Radio Networks, Systems, and Equipment. Department of Justice Order 2880.1A, "Information Resources Management"

(b)(2)High

AM 3.2.206, Electronic Mail (e-mail).

### 33.1 General.

Agency personnel use several types of communications equipment to facilitate the completion of their individual missions. The Personal Property Operations Handbook, M-429, Chapter 16: Radios, Electronics, and Communication Equipment, deals with the acquisition, inventory, maintenance and disposal of excess/surplus radios, electronics and communications equipment, as well as the regulations relating to that equipment. See also Radio Networks, Systems, and Equipment, AM 3.2.213.

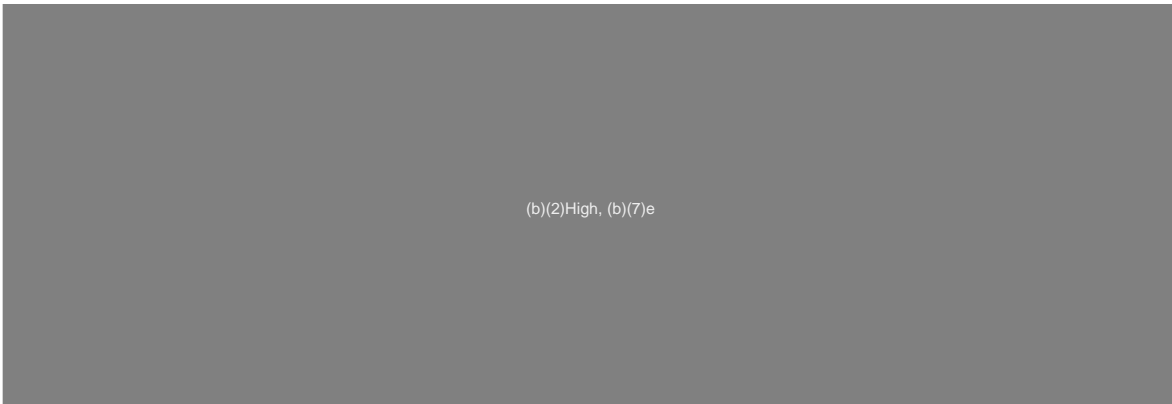
### 33.2 Types of Communications Equipment.



### 33.3 Radio Use.

Part III, Chapter 36, of the Detention Standard: Transportation (Land Transportation) [contained in Appendix 26-1 of this manual] describes exact procedures to be followed for two-way radio use.

### 33.4 Agency-authorized Phonetic Alphabet and 10 code.





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### 33.5 Disposal of Communications Equipment.

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### 33.6 Cellular Telephones and Paging Devices.

Many officers now carry (b)(2)High, (b)(7)e, so that they can be reached at any time, if necessary. These devices are government property and are to be used solely for government business. They should be protected from theft or misuse. Remember that these devices are not considered secure. Therefore, classified, law enforcement sensitive material, or information relating to confidential activities, should not be discussed using such non-secure equipment.

### 33.7 Service-wide E-Mail System (cc:Mail).

There are very specific and detailed requirements that all agency employees must adhere to in regard to the use and management of e-mail systems. AM 3.2.206, Electronic Mail (e-mail), discusses each of the following subjects in detail:

Privacy

Determining when an e-mail is a federal record

Saving and deleting non-federal-record e-mail messages

Protecting system access

Permissible uses of the e-mail system

Prohibited uses of the e-mail system

Agency employee responsibilities

Employees in most offices have access to the agency-wide e-mail system (Lotus cc:Mail). This system provides an efficient means of communicating between offices or between personnel within an office. Some employees have access to e-mail through their office workstation, a laptop computer, or both.

The e-mail system is also linked to the Internet, making electronic communication possible with external entities. Such Internet messages should not be regarded as secure. Remember that electronic messages, which are retained, become agency records that may be obtained through the Freedom of Information Act [see General Counsel Opinion 89-75]. It is the responsibility of the individual user to determine which e-mail messages need to be printed or archived and made a part of the agency's records. Department of Justice Order 2880.1A, Information Resources Management [[http://10.173.2.12/dojorders/DOJ\\_2880.1A.htm](http://10.173.2.12/dojorders/DOJ_2880.1A.htm)] provides specific guidance regarding employees' use of the Internet and the Department's ability to monitor such use.

33.8 Registration With National Law Enforcement Communications Center (NLECC).

## **Chapter 34 Fingerprinting**

34.1 General

34.2 Authority

34.3 Who is Fingerprinted?

34.4 Special Instructions for Single-prints

34.5 Who Takes the Fingerprints?

34.6 Procedures for Taking Fingerprints.

34.7 Disposition and Storage of Ten-prints and Single-prints

34.8 Reports on Disposition of Criminal Charges

References:

INA: Section 262 [8 USC 1302]

Regulations: 8 CFR 103.2(e), 236.5, 264.1

Other: Special Agents Field Manual (M-490), Chapter 16.1; Special Agents Field Manual Appendix 16-1, FBI Guidelines for Preparation of Fingerprint Cards; Special Agents Field Manual Appendix 16-2, FBI Reference Guide to Aid in Understanding Arrest Abbreviations; Special Agents Field Manual Appendix 16-3, INS Servicewide Fingerprint Policy; Special Agents Field Manual Appendix 45-1, Procedures for Entering Lookout and Alert Records into IDENT.

34.1 General.

One of the more important functions in any police activity is the taking of fingerprints and the processing of fingerprint cards. The science of fingerprint identification is based on the fact that the patterns formed by the friction ridges appearing on the inner surfaces of the fingers and hands are individually characteristic, permanent, and unchangeable. Fingerprint patterns follow general types that have been scientifically divided and classified into groups and are easily indexed and recorded for identification purposes.

This chapter and the related references are intended to assist officers in the preparation of the FBI Criminal Fingerprint Card, Form FD 249, and live-scan printing systems. Included are examples and instructions that will identify the correct manner in which data is to be recorded on the fingerprint card. It is important to remember that if any of the required fields are left blank, the card is rejected without further processing. Making use of this information will help you to receive prompt identification results by reporting correct information in a standardized manner.

The FBI's Identification Division maintains fingerprint records and name index cards, including all known aliases of persons coming to their attention through the submission of fingerprint charts from various sources. These prints have been submitted to the FBI by law enforcement agencies throughout the United States, territories and possessions and many foreign countries. This information is available to the Service upon request, and is used in processing applications for naturalization and other types of applications, as well as to obtain information pertaining to the criminal record of persons subject to investigation.

The FBI maintains a record of the fingerprints of all persons arrested by the Service and of persons excluded, deported, or removed. Should such persons subsequently come to the attention of another law enforcement agency, which is a contributor to the FBI's fingerprint files, the FBI's reporting system will notify the Service of the person's whereabouts and the nature of the subject's charges. However, the FBI does not maintain the fingerprints of Service benefit applicants, once checked against the FBI fingerprint databases.

#### 34.2 Authority.

Immigration officers have statutory and regulatory authority to fingerprint aliens for a variety of purposes, primarily section 262 of the Act, and 8 CFR sections 236 and 264.

#### 34.3 Who is Fingerprinted?

The INS Servicewide Fingerprint Policy found in Special Agents Field Manual Appendix 16-3, prescribes Service fingerprint requirements that encompass who is fingerprinted, what finger is to be utilized for single-prints, who takes the fingerprints, disposition and storage of fingerprints, and disposition of criminal charges/immigration benefits.

Form FD-249 is used to fingerprint every alien 14 years of age or older who has been:

- (a) taken into custody with or without a warrant of arrest per 8 CFR section 287;
- (b) served with a Notice to Appear in removal proceedings;
- (c) found to have willfully violated status as a crewman, or taken into custody for deportation as a crewman under section 252(b) of the Act;
- (d) removed from the United States under any provision of the Act (expedited removal, administrative removal, judicial removal, reinstated removal, or removal pursuant to an order of an immigration judge);
- (e) arrested by the Service and presented for prosecution for a criminal offense;
- (f) found inadmissible or has applied for admission or otherwise encountered at a Port-of-Entry and identified as mala fide, where a supervisor deems appropriate;

The INS requires applicants and petitioners age 14 to 79 for certain immigration benefits to be fingerprinted by an authorized fingerprint site via Form FD-258, Applicant Fingerprint Card, for the purpose of conducting FBI criminal background checks.

Aliens deemed subject to the registration and fingerprinting requirements of section 262 of the Act (see Inspectors Field Manual, Chapter 15.11 and Appendix 15-9, for NSEERS registration procedures) are normally fingerprinted via the IDENT system.

#### 34.4 Special Instructions for Single-prints.

Only the right index finger will be utilized on agency-issued cards or enforcement forms; however, if a clear right index fingerprint is not possible then the fingers in the following order will be utilized: left index, right thumb, left thumb, right middle, left middle, right ring, left ring, right little, left little.

The location and size of the print will be uniform on all agency-issued cards to permit the single-print to be used for verification to establish positive identification.

#### 34.5 Who Takes the Fingerprints?

Fingerprint training for agency and contract employees must be based upon the standards published in Special Agents Field Manual Appendix 16-1, FBI Guidelines for Preparation of Fingerprint Cards.

- (a) FD-258, Applicant Fingerprint Card. Applicants and petitioners using Forms FD-258 may be fingerprinted by an agency employee trained in fingerprinting techniques and procedures or by a trained employee at an Application Support Center.
- (b) FD-249, Criminal Fingerprint Card. Aliens being fingerprinted on Form FD-249 may be fingerprinted only by an agency employee or contract employee trained in

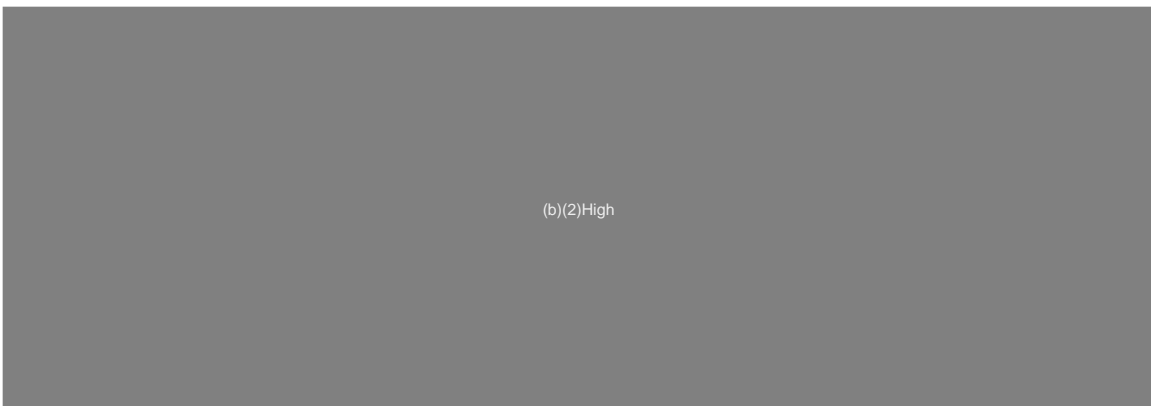
fingerprinting techniques and procedures or by an employee of a law enforcement agency similarly trained.

(c) R-84, Disposition Form. Form R-84 shall be prepared at the time of processing. In the case where criminal prosecution is contemplated, Form R-84 (two sets) shall be prepared to timely record administrative and criminal disposition. The final disposition of each case shall be reported to the FBI's Identification Division on Form R-84.

#### 34.6 Procedures for Taking Fingerprints.



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(b)(2)High



(b)(2)High

For aliens for whom fingerprints are required under special projects, per 8 CFR 264.1(f), the ten-print card will be sent to the Biometric Support Center (address can be found in Appendix 1-1) only if the alien was not enrolled electronically by field officers.

#### 34.8 Reports on Disposition of Criminal Charges.

The final disposition of each case must be reported to the FBI Identification Division. If the final disposition is not available when the fingerprint card is submitted, FBI Form R-84 will be prepared and forwarded with the case. Notification, which must be prepared after receipt of verification of departure or endorsed warrant of removal, is the responsibility of the office holding the file, even though the alien may have departed or been deported through a district other than the district of origin. When the FBI number is unknown, furnish date of birth, sex, and fingerprint classification if known.

Final disposition shall be shown as follows: "Removed," "Departed voluntarily," "Status adjusted to lawful permanent resident," "Notice to Appear canceled," "Proceedings terminated by IJ (BIA)," Alienage not established," "Released as U.S. citizen (or lawful resident alien)," "Alien died," followed in each instance by the date of occurrence. If the alien was deported or departed voluntarily to Mexico, add such information after the date, in appropriate cases, or "via airlift to Mexico." "Departed voluntarily" includes the case of an alien who departed from the United States before the expiration of the voluntary departure time granted in connection with an alternate order of removal.

Where INS participates (by submitting ten-prints) in a State criminal history records system, the case agent must also report the disposition of every criminal arrest to the State.

Subsequent dispositions not included on the fingerprint card are required to be filed on Form R-84 before a case can be closed. The lack of filing dispositions on the part of Service personnel can be extremely frustrating to the FBI and other interested agencies. The responsible Detention and Deportation officer will advise the FBI of the removal of criminal aliens.

## **Chapter 35: Uniforms**

References: Article 25, Agreement Between INS and the National Border Patrol Counsel (NBPC), M-422. Article 25, Agreement between INS and the National Immigration and Naturalization Service Counsel (NINSC), M-203.

Guidance on all issues concerning uniforms, uniform allowances and personal appearance (for both uniformed and non-uniformed personnel) is located in Article 25 of the Agreement between INS and the National Immigration and Naturalization Service Counsel (NINSC), M-203. Guidance for individuals who are included in the Border Patrol bargaining unit is found in Article 25 of the Agreement Between INS and the National Border Patrol Counsel (NBPC), M-422.

# Chapter 36: Service Records

- [36.1 Introduction to Government Records Systems](#)
- [36.2 Records Security Requirements](#)
- [36.3 Introduction to Automated Records Systems](#)
- [36.4 Automated Case-File Creation, Maintenance and Tracking Systems](#)
- [36.5 Automated Case-Processing Systems \(Immigration Services\)](#)
- [36.6 Automated Case-Processing Systems \(Enforcement\)](#)
- [36.7 Automated Systems \(Management\)](#)
- [36.8 Data Sharing Interconnection Security Agreements \(ISA\)](#)

References:

Other: [AM 3.3.101](#); Record Operations Handbook; [INS Managers: Your Records Responsibilities](#).

## 36.1 Introduction to Government Records Systems.

The Department maintains a wide variety of records. It has access to numerous records maintained by other agencies as well. Knowing how to use these records is critical to the successful accomplishment of our mission. The purpose of this chapter is to increase your knowledge of how to effectively use available records.

A record is defined as any material created or received as a result of an official government action, that is preserved, and which contains evidence or information of value. A variety of storage and retrieval methods are utilized to organize these records and to optimize their usefulness. They include traditional systems such as placing written or printed documents, photographs or videotapes in file folders; as well as more advanced methods of storage for electronic databases and mail messages.

There are mandated procedures to be followed when storing, accessing or releasing any government record. General guidelines, applicable to all agency records regardless of their format, are described in the Records Operations Handbook. Particularly helpful is the Alphabetical Table of Contents as well as the document: [INS Managers: Your Records Responsibilities](#). You can access the Records Operations Handbook on the Intranet at (b)(2)High, (b)(7)e

Basic procedures for handling alien records that are stored in A-files can be found in Part II-1 of the Records Operations Handbook, A-file Basics. Other chapters of the ROH

include instructions regarding processes such as Consolidation of A-files, Proper Handling of Action-required Material, and Obtaining Certification for Copies of Records. Procedures specific to Detention and Removal personnel are included throughout this manual in the appropriate chapters.

Automated systems are becoming more readily available to store, maintain, access and process a variety of records. Procedures relating to individual automated record systems are described in the remaining sections of this chapter. For information on other agency record systems, see [Chapter 41](#) of this manual.

### 36.2 Records Security Requirements.

In addition to having a critical need to access information from Departmental records, immigration officers and other employees have an obligation to protect those records from unauthorized release, tampering or destruction. Accordingly, all employees with access to Departmental record systems must be familiar with, and abide by, the security requirements for each system of records, including password issuance and protection.

General procedures relative to records security, including the handling of classified and limited-official-use materials and compliance with FOIA and Privacy Act provisions, are outlined in [Chapter 2](#)

(b)(2)High

(b)(2)High. It should particularly be noted that several systems regularly used by Detention and Removal personnel, such as DACS and CIS, are subject to limited official use.

For specific security requirements for each of the available systems of records, see the related section of this chapter. For security procedures relative to various interagency systems, see [Chapter 41](#) of this manual as well as [Chapter 33](#) of the Inspectors Field Manual. [Also see [AM 3.2.209](#) regarding automated-systems security, [AM 3.2.204](#) regarding password requirements, and [Chapter VI](#) of the Security Officer's Handbook.

### 36.3 Introduction to Service Automated Records Systems.

Subsequent sections of this chapter briefly describe a number of available automated record systems. Included are references to tools, such as user manuals, that are designed to assist in the utilization of each system. Users of all automated systems should also be aware of the availability of the Help Desk [[see ICE Help Desk](#)], which was established to support users encountering problems with automated systems.

NOTE: When using any automated system to conduct a search, it is critical that the user be aware of exactly which databases the particular system is querying at any given time. For example, an NCIC search can mean a search of any number of the various databases

contained within NCIC, depending on how the search is initiated. Likewise, an IBIS search may query certain databases within NCIC, but not others, depending on which type of query is conducted.

Part I-15 of the Records Operations Handbook (ROH) contains a brief overview of most agency-wide and interagency systems available to immigration personnel, complete with references and links to the user manual for each system listed. As an alternative to searching through the subsequent sections of this chapter (or Chapter 41) for non-agency automated systems, users may find it more convenient to access the information from that location. The Application Systems Catalogue is an additional source of information concerning automated records systems. Also, Part I-15 of the ROH suggests using the search function on the Intranet (Powerport) to search for further information that may be available on any individual system. This process is also useful in searching for other information on the Intranet. See (b)(2)High, for the Applications System Catalog and

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access to the ROH Part I-15

#### 36.4 Automated Case-File Creation, Maintenance and Tracking Systems.

(a) Central Index System (CIS). CIS is the primary system used to create, maintain and track Service A-Files. It displays the current File Control Office (FCO) for each A-File, as well as a limited history of the previous FCO and any requesting FCO. It contains limited biographical information, some case information (related to both enforcement and benefit actions), and historical data related to the individual. There are also links and references to information contained in other automated records systems.

The CIS Manual contains considerable information that is helpful in understanding the contents of CIS, navigating through CIS by use of numerical or alphabetical jump codes, a glossary, a data-element dictionary and information on accessing INS standard tables. It also includes further information concerning security, FOIA and Privacy Act considerations related to the system. See (b)(2)High, the CIS Manual and (b)(2)High for the CIS Quick Reference Guide.

(b) Receipt Alien File Accountability and Control System (RAFACS). RAFACS tracks the location of A-Files, T-Files, Sub-Files, W-Files and Receipt Files within a local office. A daily interface between CIS and RAFACS helps keep track of the physical location of A-Files. The RAFACS Manual may be of some value to the routine user, but contains in-depth descriptions of functions typically used only by employees in the Office of Records. The best source of information concerning the use of RAFACS by Detention and Removals personnel may be a supervisor or training officer. See

(b)(2)High

(c) National Files Tracking System (NFTS). NFTS is scheduled to replace RAFACS. When fully implemented, it will be easier to track files on a national basis. After

completion of Phase II, the web-enabled national version will enable the tracking of files nationally from a centralized Oracle database. In addition to tracking A-Files and Receipt Files, NFTS will track Certificate Files, Substitute Files, Temp Files and Work Files. It will also track duplicates for all file types except Receipt Files, as well as the number of file consolidations (for example, an A-File consolidated into another A-File) and types of file combinations (for example, an A-File combined with a T-File). NFTS deployment information, including a training manual, is available on the Intranet at

(b)(2)High

### 36.5 Automated Case-Processing Systems (Immigration Services Division).

(a) Computer-Linked Application Information Management System 3.0 (CLAIMS 3). CLAIMS 3 is a distributed, transaction-based system designed to replace an earlier system known as FARES. It supports the processing of applications received by service centers, captures fee information, and provides a mechanism to account for funds received. CLAIMS 3 also enables the tracking of the status of applications and petitions for benefits under the Act, when a service center handles those applications and petitions. Field offices can query CLAIMS 3, but it is not updated with data from applications and petitions being handled by field offices. See

(b)(2)High

(b) Computer-Linked Application Information Management System 4.0 (CLAIMS 4). CLAIMS 4 was initially designed to provide a mechanism for handling naturalization cases. However, the system is being revised to provide a means of tracking the status of any request for a benefit under the Act, from work authorization to citizenship. CLAIMS supports interfaces with Service and non-Service records systems, such as the INS Central Index System (CIS), the Receipt and Alien File Accountability and Control System (RAFACS), and the National Crime Information Center (NCIC). See

(b)(2)High

(c) Employment Authorization Document System (EADS). EADS is a standalone desktop system used to capture data and to generate a standardized identification document when temporary employment authorization is granted to an alien. The information contained on the card is stored in an automated database where it can be accessed by terminal inquiry. Data from EADS is uploaded to CLAIMS 3 and CIS to provide a consolidated record. EADS has the capacity to generate alien registration receipt numbers (100-million numbers), but these numbers do not relate to actual A-files. See EADS at

(b)(2)High

(b)(2)High

(d) Refugees, Asylum & Parole System (RAPS). RAPS provides case tracking and management capability for all INS Asylum casework. RAPS interfaces with CIS, DACS, NAILS, RAFACS, and ANSIR. RAPS produces Notices to Appear (NTA), among other forms, and automatically creates cases in DACS through the DACS interface. See

(b)(2)High

(e) Re-engineered Naturalization Application Casework System (RNACS). RNACS is a centralized Integrated Data Management System (IDMS) database system resident at the Justice Data Center, Dallas. It is a legacy system that has been replaced by CLAIMS 4. It is used to find information on certain older naturalization cases. See

(b)(2)High

(f) Image Storage and Retrieval System (ISRS). ISRS is a centralized INS data repository consisting of formatted records of biographical data (name, date of birth, mothers first name, fathers first name, and country of birth) and biometrics data (digital images of facial picture, fingerprints, and signature) collected from certain INS-issued documents. Data is collected from documents such as the Alien Registration Receipt Card, Employment Authorization Document and the Border Crossing Card. See

(b)(2)High

### 36.6 Automated Case-Processing Systems (Enforcement).

(a) Deportable Alien Control System (DACS). DACS is the primary case-processing system used by Detention and Removal personnel. DACS is an automated docket-control system that provides information concerning the status of individuals who have been placed in removal proceedings or who have been ordered removed from the United States. The DACS User Manual is included as Appendix 36-1. Standard procedures for the use of DACS in case processing are described throughout the various chapters of this Field Manual.

(b) Enforcement Case Tracking System (ENFORCE) Removal Module (EREM). EREM stands for ENFORCE Removals Module. ENFORCE is an integrated system that supports all INS enforcement processing and case management. EREM is the module of that system that is being developed to support INS detention and removal operations. EREM will track removal cases from the time that apprehension processing is complete through final removal (or other action that results in case closure). EREM will also track detainees held in INS custody, both in INS facilities (including U. S. Marshals Services prisoners held in INS detention facilities in some instances) as well as in facilities owned and operated by other agencies and private companies.

EREM will support detention and removal operations by producing many of the forms needed and by automating a variety of clerical and administrative tasks. EREM will support management by providing statistical and other information regarding detention and removal operations. EREM general information can be viewed at

(b)(2)High

. EREM development and design documentation can be accessed from the Requirements and Enterprise Model site at

(b)(2)High

(c) Automated Nationwide System for Immigration Review (ANSIR). ANSIR is the Information Resource Management System that provides the Executive Office for Immigration Review (EOIR) with case tracking and management information, office automation, internet/intranet, and automated legal research services. See the EOIR site at

(b)(2)High

[Note: This link may only work from the INS Intranet via Internet Explorer, and not via Netscape, depending on the users Netscape settings.]

Although not an enforcement system, officers can access ANSIR directly, for the purpose of obtaining a court date in order to place the date on a Notice to Appear (NTA). By placing a court date on the NTA prior to personal service of the NTA on an alien, you can establish that the alien was properly notified of his court date, should the alien fail to appear for the scheduled hearing. Each enforcement field office should have at least one individual who is trained and has access to ANSIR. If additional access is needed, a request should be submitted through proper channels.

(d) Enforcement Case Tracking System (ENFORCE). ENFORCE is an overarching event-based case management system for enforcement activities. Interface compatibility between ENFORCE and other systems is managed through the integration of data structures in the Enforcement Integration Database (EID). ENFORCE incorporates a collection of automated case management and functional systems. See

(b)(2)High

[Note: This link may only work from the INS Intranet via Internet Explorer, and not via Netscape, depending on the users Netscape settings]

ENFORCE provides access to a complete case history of each subject apprehended that can be shared by all mission areas within INS. Functions including subject processing, biometrics identification, and preparation and printing of forms are part of the application.

(e) Automated Biometric Identification System (IDENT). IDENT is a client-server biometrics-analysis module that assists immigration officers in the identification of repeat illegal entrants, as well as aliens wanted by other law enforcement agencies. It is also being used with ENFORCE to enroll aliens in NSEERS. The IDENT Intranet site is extensive and thorough and may be viewed at (b)(2)High An especially helpful user tool on that site is the Quick Reference Guide. [See (b)(2)High There are also Deportation Officer and Detention Officer standard operating procedures for the use of ENFORCE/IDENT. [See

(b)(2)High

(f) Criminal Alien Investigation System (CAIS). CAIS was established for use by the Institutional Removal Program (IRP) to provide general casework processing and management functionality. Specific system functions include case assignment and management, forms printing, reporting, and data integration with other enforcement systems, including the federal Bureau of Prisons (BOP) SENTRY system. CAIS currently is used in Federal IRP locations where users have a requirement for online access to criminal alien data. See information on CAIS at

(b)(2)High



(g) National Security Entry Exit Registration System (NSEERS). NSEERS is an integrated entry-exit system that enables the Service to determine which aliens are present in lawful nonimmigrant status, and which aliens have overstayed their nonimmigrant period of admission. The system will also assist in the identification of known criminal and security threats, and prevent their entry into the United States. Additionally, NSEERS will enable the government to monitor the departure of individuals in whom law enforcement has an interest. Check for updates on NSEERS processing on the Intranet at

(b)(2)High

(h) Student and Exchange Visitor Information System (SEVIS). SEVIS is an Internet-based system that provides the Student and Exchange Visitor Program (SEVP) a mechanism by which to record and monitor information on nonimmigrant students and exchange visitors, as well as information on schools approved for attendance by nonimmigrant students. SEVIS enables schools and program sponsors to transmit electronic information and other event notifications via the Internet to INS and the Department of State. See

(b)(2)High

(i) National Automated Immigration Lookout System II (NAIIS). NAIIS is a system used by immigration officers to determine a traveler's admissibility to the United States. NAIIS contains approximately 1.2 million lookout records, including data received from the Department of State, NIIS, and DACS. NAIIS records interface daily with IBIS and CIS.

(b)(2)High, (b)(7)e

(j) Portable Automated Lookout System (PALS). PALS is designed to facilitate seaport inspections, as well as inspections conducted at remote sites where access to automated databases are otherwise unavailable. PALS includes the NAIIS and CLASS databases, the ADIT Lost/Stolen Cards Report, the Outstanding Fined-Vessels Report, as well as vessel history data with information on vessels that have been fined in the past. See

(b)(2)High

(k) Non-Immigrant Information System (NIIS). NIIS is an automated central repository of data designed to track nonimmigrant entry and exit information from the I-

94 (Arrival/Departure Record). NIIS can be queried based on a number of different data elements contained in the system. See (b)(2)High

(l) Integrated Common Interface (ICI). ICI is a web-based system that pulls data from five other systems (CIS, CLAIMS, DACS, NACS, and RAPS) and shows data elements that are common to each. It is currently in limited use at a small number of offices. See (b)(2)High

(m) Microfilm Digitization Application System (MIDAS). MIDAS allows automated searching of digitized microfilm images. Currently, it is available only at HQREC. The Department is converting the 60 million microfilm records on individuals who entered the United States between 1906 and 1975. When the conversion is complete, the system will be available agency-wide. To request a manual search of microfilm records at USCIS, e-mail COWREC@DHS.GOV. See

### 36.7 Automated Systems (Management)

(a) Bond Management Information System (BMIS). BMIS is a centralized database that maintains the records on immigration bonds. It also generates forms, letters, and bills associated with bonds and interfaces with DACS. The system supports personnel at HQ, regions, and field offices who require bond information in the performance of their duties. BMIS resides on the IBM mainframe at the Department of Justice Data Center in Dallas, Texas. A BMIS Access Request Form can be submitted to obtain read-only access to BMIS for those individuals who handle bond breaches and cancellations. Download the BMIS Access Request Form at

(b)(2)High, Once you have access, refer to Bond Management Information System: Instructions for Field Users with View-Only Access ([Appendix 12-5](#), below). Also helpful are the DMC Intranet site (b)(2)High and the Bond Field Financial Procedures Handbook (b)(2)High.

(b) I-Link is an immigration reference program. I-Link is an electronic library of information useful to immigration personnel in virtually every field of employment. I-Link is available on CD-ROM or through the Intranet. If available, the CD-ROM version is somewhat more convenient to use, as it does not rely on network communication systems. Be sure and check the Query Help, Glossary and Help tabs at the top of the I-Link screen to make the most of this system. See

(b)(2)High, (b)(7)e

(c) Performance Analysis System (PAS). PAS is an online data entry and retrieval system for the agencies G-23, Report of Field Operations. PAS is used to track agency workload accomplishments and human resource expenditures. The system contains data elements covering 13 statistical subsystems that collect and report data for all programs including Examinations, Investigations, Detention and Removal, Management and

International Affairs. Field offices across the country and overseas report online each month.

The PAS Intranet site provides information about PAS data entry and output reporting capabilities. The PAS Intranet site provides a means of obtaining information regarding statistics relative to operational work units and resource expenditures for programs as reported on the G23 form. See (b)(2)High

(d) Updated Information on Change of Address Initiatives. For the latest information on procedures for handling change of address information, see the Intranet site set up for this purpose at

### 36.8 Data Sharing Interconnection Security Agreements (ISA).

The Office of Detention and Removal (DRO) is responsible for the content and functionality of the Deportable Alien Control System (DACS). DACS is the system of record for all aliens in INS detention, or in INS removal proceedings. The information contained in this system has wide-ranging applications to an ever-increasing audience outside the INS. Through the utilization of data extracts, interfaces and dial-up connectivity, DRO provides DACS information access to a growing number of Other Government Agencies (OGA) in order to promote data-sharing and to advance their respective law-enforcement missions. These data-sharing initiatives are facilitated through the use of negotiated and mutually approved Interconnection Security Agreements (ISA). Sample versions of the ISA may be found at

(b)(2)High

DRO works closely with the INS Password Issuance Control System (PICS) and with INS Information Technology, Security and Information Resources Management (IRM) to facilitate the execution of ISA agreements, on-site access and training. These efforts include facilitating confirmation of user background clearances; establishment and review of information technology security controls; configuration of hardware, software and telecommunications; and real-time end-user system orientation and training. Several initiatives established by DRO are being leveraged by the INS in the development of standards for interagency data-sharing. As requests for unilateral and bilateral data-sharing initiatives continue to evolve, DRO will continue to work with the INS legal, program and security offices to update the terms and conditions that govern the agreements.

## **IV. Administration of Detention and Removal Operations**

### **Chapter 41: Sources of Information and Records**

#### 41.1 General

#### 41.2 Sources and Organization of Immigration Law and Policy

41.3 Basic Research Methods

41.4 Uniform Subject Filing System

41.5 Factual Research: Accessing Service and Other Government Records

41.6 Internet Security and Usage

41.7 Foreign Records

41.8 Law Enforcement Databases

41.9 Certification of Official Records

41.10 Freedom of Information Act/Privacy Act

References:

Regulations: 8 CFR 103; 5 CFR 550.

Other: Records Handbook (M-407); Uniform Subject Filing System (M-425); Staff Action Manual (M-455); AM 3.3; 5 U.S.C. 552.

41.1 General.

You will be required to perform two distinct types of research during the course of your career in the Detention and Removal program:

Legal research, which relates to the state of the law itself, and its applicability to an individual alien;

Factual research, which entails pursuing and obtaining record information relating to an alien's status, nationality, criminal history, location, etc.

As you perform your duties, you will be exposed to areas of immigration law that may have a bearing on the action you take. You will encounter or uncover unfamiliar issues and situations that will require your response. Determining the correct approach to those issues, including whether they are relevant at all, will not always be apparent. Even when a situation, or an outcome, seems straightforward and obvious, you must always provide a rational basis for any action you take. This will often involve citing legal authority.

Sometimes you will need to perform research before you make a decision. Precedent and experience will not apply to every case, nor will every situation be quickly or easily resolved. Creative thinking and a willingness to dig beneath the surface will make you a more effective officer. This chapter will familiarize you with some of the basic methods of legal research and with the general organization of our immigration laws. It will also

identify and explain some of the many sources (periodicals; federal, state and local databases; law enforcement information systems; etc.) available to the law enforcement community that can help you locate the information essential to the successful completion of a case. You should familiarize yourself with the various sources of information available from businesses, organizations, Immigration and Naturalization Service lawyers, etc. Larger municipal libraries, business libraries, and university libraries are also a good source of information.

#### 41.2 Sources and Organization of Immigration Law and Policy.

Extensive information on the various sources and organization of Immigration Law and Policy can be found in Chapter 4.2 of the Special Agents Field Manual.

#### 41.3 Basic Legal Research Methods.

Extensive information on basic legal research methods can be found in Chapter 4.3 of the Special Agents Field Manual.

#### 41.4 Uniform Subject Filing System.

The Service instituted the Uniform Subject Filing System in October 1996. This filing system classifies information numerically according to specific subject matter. The filing system is uniform throughout the Service. A standard subject classification code identifies the subject of a document. (See the Uniform Subject Filing System, OPM Form M-425, available from the regional Forms Transcription and Distribution Center in hard copy; also available electronically through I-LINK). This filing system enables you to locate policy issuances and other Headquarters communications. Files created and maintained under the previous filing system were "frozen," and only contain material issued before fiscal year 1996.

Along with the Uniform Subject Filing System, you should familiarize yourself with the correspondence and records-management guides and handbooks, described below.

(a) The INS Staff Action Manual (OPM Form M-455). The Staff Action Manual (SAM) (b)(2)High

(b)(2)High provides guidance, formats, and examples of official correspondence. In addition to standardizing guidelines for preparing, addressing, and packaging correspondence, this manual also provides guidance on protocols for scheduling, conducting, or attending meetings; instructions for planning and giving testimony; and guidelines for scheduling and preparing senior-management level events.

(b) The INS Records Operations Handbook (OPM Form M-407). The Records Operations Handbook (ROH) (b)(2)High covers the records-management program, including the statutes and regulations that govern federal records. It also sets forth your responsibilities in creating, maintaining, or using Service records.

The ROH applies to all records, regardless of format, in accordance with the Federal Records Act (44 USC. 3101): paper, electronic, audiovisual, microfilm, etc. It applies to all records created, collected, processed, used, stored, or destroyed by INS. The Federal Records Act requires federal agencies to make and preserve records by fully documenting their organization, functions, policies, decisions, and procedures. Service records are managed in accordance with applicable INS guidance, laws, and regulations, as indicated above.

#### 41.5 Factual Research: Accessing Service and Other Government Records.

(b)(2)High, (b)(7)e

GPO Access. Information on federal government databases and links, provided by the Government Printing Office [<http://www.gpoaccess.gov/multidb.html>].

(b)(2)High

Investigators Guide to Sources of Information (GAO/OSI-97-2). Compiled by the Office of Special Investigations of the U.S. General Accounting Office; accessible both in PDF file and HTML/Web versions [<http://www.gao.gov/special.pubs/soi.htm>].

PACE (Pace Law School). Decisions of the U.S. Court of Appeals for the Second Circuit, a joint project of Pace University School of Law Library and Touro Law Center; [<http://www.findlaw.com/casecode/courts/2nd.html>] and <http://www.ca2.uscourts.gov/main.htm>.]

PACER (Public Access to Court Electronic Records). Case and docket information from federal appellate, district and bankruptcy courts. The Administrative Office of the U.S. Courts runs the PACER Service Center. Registration is required

(b)(2)High

THOMAS. Information on federal legislative activity, provided by the Library of Congress. Databases include bills pending, roll call votes, committee memberships, public laws, etc. See (b)(2)High for an overview of THOMAS. See <http://thomas.loc.gov> to search for legislation.

United States Government Manual. The United States governments official handbook. Published by the Government Printing Office, this manual describes the purposes and programs of federal agencies, provides organizational charts for the major agencies, identifies key officials, and provides addresses for regional and some district and field offices. In general, the United States Government Manual will direct you to the appropriate source for further information [<http://www.gpoaccess.gov/gmanual/browse-gm-05.html>].

Westlaw. A commercial legal research service that provides its subscribers access to almost 17,000 databases; see <http://www.westlaw.com/about>.

#### 41.6 Internet Security and Usage.

##### (a) General.

Use of Agency computer systems, including use of Internet constitutes consent to agency monitoring to identify improper use and to ensure that system service remains available and is functioning properly for all users. There should be no expectation of privacy with respect to use of government computer systems. The Department of Homeland Security (DHS) is authorized to access e-mail messages or other documents on government computers systems whenever it has a legitimate governmental purpose for doing so.

Use of agency computer systems, including connection to Internet sites, or use of Internet e-mail is subject to same restrictions on use as are other government furnished resources provided for the use of employees.

Some personal use of government computer systems, including use of Internet, is permissible in accordance with existing policy on personal use of government property, when there is no additional cost to the government and no interference with official business.

(b) Prohibited Use of Internet.

Use of Internet sites that result in any additional financial charge to the government.

The obtaining, viewing or transmitting of sexually explicit material or other material inappropriate to the workplace, which might be considered to contribute to hostile work environment for some employees.

Use for other than official government business if that use results in significant strain on agency computer systems (e.g., mass mailings or sending or downloading large files such as programs, pictures, video files, or games) or interferes with the conduct of official business operations.

Any other prohibited activity, such as sending out solicitations or engaging in political activity prohibited by the Hatch Act.

Never send classified government information via the Internet.

Sensitive but Unclassified government information should only be sent via Internet when the sender has taken steps to provide some form of protection to the data. Some of the options include not inserting government information in the subject line or body of the e-mail but as an attachment document. Password protect the attachment and then provide the password to the receiver(s) in an "out of band" method, such as a phone call. Another method is to use a file reduction program such as Pkzip to "zip" or reduce the file. This not only reduces the file but also provides a form of encryption. This latter option requires that the receiver(s) have the Pkzip program to unzip the file. Although all agency information is deemed to be at least sensitive in nature, some discretion is required. Examples of sensitive information are personal data, such as social security number, trade secrets, system vulnerability information, pre-solicitation procurement documents, such as statements of work, and certain law enforcement information.

41.7 Foreign Records.

Extensive information on foreign records can be found in Chapter 4.6 of the Special Agents Field Manual.

41.8 Law Enforcement Databases.



Extensive information on a wide variety of law enforcement databases can be found in Chapter 4.7 of the Special Agents Field Manual. Additional information on IBIS can be found at (b)(2)High on the Intranet.

#### 41.9 Certification of Official Records.

Information on the certification of official records can be found in Chapter 4.8 of the Special Agents Field Manual.

#### 41.10 Freedom of Information Act/Privacy Act.

Information regarding Service officers responsibilities under the Freedom of Information Act and the Privacy Act (FOIA/PA) can be found in Chapter 10.12 of the Adjudicators Field Manual. Additional information can be found in the INS FOIA/PA Handbook on the Intranet at: (b)(2)High

## **Chapter 42: Resource and Performance Management**

### 42.1 General

### 42.2 Mission Support Divison

### 42.3 Concept of Resource and Fiscal Performance Management

### 42.4 Budget Formulation

### 42.5 Financial Transactions and Reports

### 42.6 Position Management

### 42.7 Bond Management Analysis

### 42.8 Performance Reporting

### 42.9 Performance Analysis System (PAS) Report

References: Statistics Handbook: Operations Statistics (G-23 Procedures).

#### 42.1 General

The purpose of this chapter is to provide field office managers with an overview of the processes and systems used by the Detention and Removal Program to establish and manage resource allocations for field operations. The information contained in this chapter will assist managers in understanding and participating in the budget cycle. It will help them to prepare documents necessary for enhancements to their office resources

(personnel and financial) and help them use available tools to monitor their own performance in managing assigned resources.

## 42.2 Mission Support Division

The Mission Support Division (MSD) is responsible for DRO data systems and analysis related to operations and performance. It coordinates DRO budget formulation and integrates resource requirements with the strategic plan, other enforcement efforts, performance and performance measures. The branch also conducts liaison with other entities such as the Inspector General and General Accounting Office related to performance reviews and inquiries and facilitates the availability of data to other law enforcement agencies at the Federal, state and local level. It performs field audits and analyzes specific aspects of operations to identify efficiencies and develop workload and resource models. This branch also provides management of the transition of the Deportable Alien Control System (DACS) to the ENFORCE Removals Module (EREM). Table 42-1 lists the functions of MSD.

### MISSION SUPPORT DIVISION RESOURCE AND PERFORMANCE REPORTING FUNCTIONS

Program Element Analysis  
Budget Formulation and Analysis  
Position Management Analysis  
Fiscal Performance Analysis and Reporting  
Bond Management Analysis  
Data Sharing and System Integration  
Special Project Support  
Financial and Performance Integration  
Audits and Reviews  
Liaison with Internal Audit  
Fiscal and Operational Reports  
Table 42-1

## 42.3 Concept of Resource and Fiscal Performance Management.

In order to perform the functions outlined above, MSD has grouped the DRO business processes and activities into the program elements as shown in Appendix 42-1. The use of these program elements allow for uniform methodologies to be applied across the spectrum of DRO activities and enable logical budget planning, field budget execution, data compilation/analysis and performance based fiscal analysis. These program elements are used within the Federal Financial Management System (FFMS) and other automated systems to identify the specific program activity that is expending resources. Personnel requirements, staffing goals, payroll expenses and performance metrics can also be developed and computed on a program element basis. The use of object class codes that identify the specific end use of resource expenditures (e.g. Detention Guard Contract) are

used in conjunction with the program elements to further refine financial data and capture specific costs of the DRO effort.

#### 42.4 Budget Formulation.

(a) General. The Federal budget cycle is a three-year process and during any calendar year MSD will actually be coordinating three separate fiscal year budgets. MSD executes, supports and formulates these budgets as listed on Table 42-2. The formulation of the DRO budget is a task that provides the most long-term impact for DRO programs and is intensely managed and coordinated to achieve the goals of the Strategic Plan. The budget formulation process is integrated with performance measurement as a result of the Government Performance and Results Act (GPRA). (See Chapter 42.8 below.)

#### BUDGET ACTIONS FOR CALENDAR YEAR 20XX

Execute 20XX current year appropriated budget which has been formulated and supported over previous two years

Support 20XX+1 OMB/Presidential budget submission to Congress which has been formulated during the previous year

Formulate 20XX+2 DRO budget submission to Department/OMB  
Table 42-2

(b) Budget Formulation. The annual budget formulation process identifies the enhancement resources, both dollars and positions, necessary to accomplish a certain level of performance as dictated in the annual performance plan. The budget is developed by using models to determine the amount of resources required to obtain stated levels of performance for all initiatives (i.e. Absconder Apprehension Initiative, Institutional Removal Program, Alternatives to Detention, etc.). Once the resource levels are identified, a brief, but detailed narrative is prepared to support each initiative being requested. Once completed, the budget request is staffed through the Department and to the Office of Management and Budget (OMB). The budget formulation process only pertains to newly identified resource requirements. It is assumed that all prior enhancements recur annually as "base" funding. Key steps in the budget process and DRO budget activities are illustrated in Appendix 42-2.

#### 42.5 Financial Transactions and Reports

The current accounting system used by DRO activities is the Federal Financial Management System (FFMS), an Oracle relational database that uses tables and standard query language to store and report data. Its primary data entry tool is the Accounting Classification Code String (ACCS) or funding string. ACCS is a 49 character segmented string that contains project codes, program elements, organization codes, object classes and other elements. All funding and costing transactions are entered into the system for

approval and processing. The system can be queried in a variety of ways using preformatted reports and, on a limited basis, ad hoc reports can be created. A variety of FFMS information including manuals, procedures and training is located on the Office of Financial Management intranet web page at (b)(2)High

#### 42.6 Position Management

(a) General. The purpose of Position Management is to assure adequate staffing and personnel costs are aligned to the correct program elements. This information is captured in the Position Tracking System (POSTS), which tracks both encumbered and vacant positions. This system facilitates the process of filling a position, and maintains data by location.

(b) Interfaces. POSTS interfaces with several personnel related systems (See Appendix 42-2) and generates over 40 different reports that are used by top management to make key business decisions that are critical to continued organization growth and efficiency. The information in most reports can be requested DRO-wide, or for a single Region, Budget Location, program element and/or Funding Type (Account). All reports enable a more efficient and effective manner for managing position resources and tracking hiring. POSTS reports verify vacant and filled positions, track position history, and allow users to update position status.

#### 42.7 Bond Management Analysis.

Mission Support Division provides data reporting and analysis relating to bonds accepted in the performance of DRO operations. Data reporting includes producing bond related reports extracted from the Deportable Alien Control System (DACS). Special reports are produced to assist DRO information needs and to identify aspects of DRO processes that require improvement. Analysis includes reconciliation of DACS bond information to the Bond Management Information System (BMIS). Analysis of underlying differences and factors contributing to those differences are used to improve and identify efficiencies in the processes related to bonds. Development of performance measures and analysis of ongoing operations related to bonds are performed as directed by the strategic plan.

#### 42.8 Performance Reporting.

(a) General. The implementation of the Government Performance and Results Act (GPRA) in 1993 emphasized that government must "manage for results." Simply stated, the law implements a strategic planning and performance-measuring process to hold government agencies accountable to the American taxpayer. To that end, the law requires government agencies to develop strategic plans with measurable program goals, and to report annually to Congress on their progress. GPRA also requires that resources requested in an annual budget should be linked to the performance of activities that provide a clear strategic focus for the Department, Agency, or program. The overarching goal is to link resources to performance.

(b) DRO Strategic Plan. ENDGAME, the DRO Strategic Plan provides a performance framework and the foundation for DRO operations and budgets. The plan's strategies are institutionalized in the five-year Business Plan, which lays out the strategies and operational goals that DRO will accomplish over the next five years. Each year will be more specifically addressed with performance measures and indicators in the Annual Performance Plan. The Implementation Plan will be the execution document containing targets for performance measures. Operations and budget requests must support the goals, objectives and strategies identified in the strategic plan and expanded in the five-year business plan and Implementation plan.

(c) DRO Performance Management Process. Appendix 42-2 illustrates the DRO Performance Management Process. In concert with the budget formulation process, MSD analysts will analyze the performance measures and indicators addressed in the Strategic Plan and supporting documents. These will be linked to fiscal performance metrics. Once these fiscal metrics are identified, financial data is retrieved from the financial system, and costs associated with the fiscal metric is analyzed with respect to performance measures/indicators achieved. This performance management process is used to compliment the overall DRO Resource and Performance Management Cycle and to support GPRA reporting.

#### 42.9 Performance Analysis System (PAS) Report.

The Performance Analysis System (PAS) is an online data entry and retrieval system for the G-23, Report of Field Operations. PAS is used to track ICE workload accomplishments and human resource expenditures. The system contains data elements covering the statistical subsystems that collect and report data for ICE programs including Office of Investigations, Federal Air Marshals, Federal Protective Service, and Office of Detention and Removal Operations.

Specific information about PAS can be obtained from the web site:

(b)(2)High

such as:

The Workload Summary Report;

The Monthly Statistical Report;

Administrative Manual instructions for each program regarding the G-22 and G-23;

Blank PAS Forms;

PAS Tutorial;

Specific Forms and Functions associated with the G-23;

Edit Cycle and Critical Dates; and

PAS Change Policy.

## **Chapter 43: Overtime**

### 43.1 General

### 43.2 Authority for Overtime

### 43.3 Categories of Overtime

### 43.4 Work Eligible for Overtime Payment

### 43.5 Time in Travel Status

### 43.6 Travel and Work Schedules

References:

United States Code: 5 U.S.C. 4505(a); 4521 - 4523; 5302; 5304a; 5372; 5376-5378; 5391-5392; 5524a; 5542; 5706b; 5753-5755; 5928; 6121(6) and (7); 8336(c); 8412; 8 U.S.C. 1353a and 1353b; 29 U.S.C. 201-219; 41 U.S.C. 261.

Regulations: 5 C.F.R. 410.406; 550.111-.114; 550.121-.122; 550.131-132; 550.171-.172; 550.181-.187; 551.151-.154; 551.422; 610.111; 610.121-122; 41 C.F.R. 301-10.124(h) and 41 C.F.R. 301-11.20.

Other: See generally, Salary and Pay, AM 1.3.100; Danger Pay While on Detail, Memorandum signed September 1, 1998, Director, Human Resource Branch; U. S. Office of Personnel Management, Pay Administration

(b)(2)High

### 43.1 General.

In general, overtime hours are hours of work that are ordered or approved, and are performed by an employee in excess of 8 hours in a day or 40 hours in a work week. An employee can receive overtime compensation for work that is administrative or law-enforcement related which meets these criteria.

The Service requires written authorization and approval for every incident of overtime, except administratively uncontrollable overtime (AUO) and Law Enforcement Availability Pay (LEA). Other than AUO and LEA, overtime should be authorized before it is worked.

The most informative sources of information on overtime and other pay issues are the INS administrative manual, AM 1.3.100, Salary and Pay, and the Office of Personnel Managements website on Pay Administration

(b)(2)High

To find regulations in title 5 of the C.F.R., go to

(b)(2)High

. Enter the title, section and part in the search box.

### 43.2 Authority for Overtime.

Pursuant to 5 U.S.C. 5542; and AM 1.3.106, appendix A, the authority to order or approve payment for hours of work in excess of 40 hours in any administrative workweek, or in excess of the scheduled workday, is delegated to specific management officials within the agency, and may be re-delegated. If this authority is re-delegated, controls must be in place to ensure that funds are available for the obligation prior to authorizing overtime. Managers should examine overtime assignments routinely to avoid waste, fraud and abuse.

### 43.3 Categories of Overtime.

(a) General. Employees who are assigned to Detention and Removal Operations may be authorized additional compensation for hours of work that exceed the employees regularly assigned shift. More than one type of overtime can be used to compensate an employee.

Currently, there are three forms of monetary compensation for overtime activities that, under the correct circumstances, are available to Detention and Removal Operations employees. These three forms of monetary compensation are:

45 Act Overtime (Scheduled Overtime under Title 5 U.S.C.);

Administratively Uncontrollable Overtime (AUO); and

The Fair Labor Standards Act (FLSA) of 1938.

Managers may offer compensatory time off in lieu of payment for an equal amount of irregular or occasional overtime hours worked only to employees in positions not authorized AUO. Budgetary constraints and staffing levels are usually issues that impact whether or not the use of compensatory time off is practical. In no instances may an employee be allowed to accumulate compensatory time off for AUO hours worked. Deportation Officers are also eligible to earn 31 Act Overtime, however, this form of overtime compensation is limited to detail assignments to the Inspections program. Overtime is specifically authorized for employees acting as inspectors, under 8 U.S.C. 1353a and 1353b, and this form of overtime was created by an act of Congress on March 2, 1931. As a result, overtime earned in the performance of inspection duties is commonly called 31 Act Overtime.

(b) 45 Act Overtime (the first version of the law providing for this form of overtime was enacted on June 30, 1945). This form of overtime is also known as Title 5 Overtime and is provided for in title 5 of the United States Code, and title 5 of the Code of Federal

Regulations. Title 5 Overtime allows full-time, part-time, or intermittent employees to be compensated for hours worked over 40 in an administrative workweek or hours worked in excess of the scheduled workday. For a non-law enforcement employee, whose basic pay does not exceed the minimum rate of pay at the GS-10 level, the hourly overtime rate is one and one-half times the employees hourly rate of basic pay (including any applicable locality-based comparability payment or special salary rate). For such an employee whose basic pay exceeds the GS-10 level minimum rate of pay, the hourly overtime rate is only one and one-half times the hourly rate of the minimum rate of basic pay for GS-10 (including any applicable locality-based comparability payment or special salary rate).

The Federal Employees Pay Comparability Act of 1990 (FEPCA) (Pub.L. 101-509, Title V, 529 [ 1 to 412], Nov. 5, 1990, 104 Stat. 1427; 5 U.S.C. 4505a, 4521-4523, 5302, 5304a, 5372a, 5376-5378, 5391, 5392, 5706b, 5524a, 5753-5755 and 41 U.S.C. 261) enacted different overtime rates and overtime payment limits for employees covered by law enforcement officer retirement coverage, or who are in positions where they would otherwise be covered. Overtime for law enforcement officers whose basic pay exceeds the minimum hourly pay for GS-10, will be at a rate equal to one and one-half times the minimum hourly rate of basic pay for GS-10 (including locality or special salary), or at the employees basic hourly rate, whichever is greater.

For information about the computation of compensation due under title 5 for 45 Act overtime work, please consult 5 C.F.R. 550.112 and 5 C.F.R. 550.113, or [AM 1.3.106](#), General Overtime, or review the Office of Personnel and Management website on Pay Administration (b)(2)High

(c) Administratively Uncontrollable Overtime (AUO). AUO is premium pay, authorized under 5 C.F.R. 550.151, that:

is paid on an annual basis,

is paid to an employee in a position in which the hours of duty cannot be controlled administratively,

is paid to an employee in a position that requires substantial amounts of irregular or occasional overtime work, and

is paid to an employee, when the employee is generally responsible for recognizing, without supervision, the circumstances which require the employee to remain on duty.

The bases for determining employment positions that qualify for AUO are outlined in 5 C.F.R. 550.153. Eligibility for AUO is primarily limited to law enforcement positions covered under the provisions of 5 U.S.C. 8336(c) and 8412(d) (commonly referred to as 6(c)). [AM 1.3.103](#), attachment K, lists those INS positions (including supervisory positions) that have been determined to be eligible for AUO. Positions that are not listed in Attachment K must be submitted to the Office of Human Resources Management for a



determination of AUO eligibility. AUO is determined as an appropriate percentage, not less than 10 percent nor more than 25 percent, of the employees rate of basic pay. 8 C.F.R. 550.154; AM 1.3.103, attachment B, section 7(a). For employees certified to earn AUO, AUO is paid for all work that is unscheduled or that is not scheduled prior to the start of the administrative workweek. Scheduled overtime (45 Act overtime, or title 5 overtime) is paid for all work that is scheduled in advance of the administrative workweek.

(d) Fair Labor Standards Act (FLSA) of 1938 (June 25, 1938, ch. 676, 52 Stat. 1060; 29 U.S.C. 201-219). If an employee who is engaged in law enforcement activities (including security personnel in correctional institutions) receives AUO pay and is nonexempt from (in other words, is covered by) the overtime pay provisions of the FLSA, she or he is also authorized to collect FLSA overtime pay when the proper conditions are met. FLSA overtime pay is equal to 0.5 times the employees regular hourly rate of pay for all hours of work in excess of 85.5 hours in a pay period, including unpaid meal periods. See 29 U.S.C. 207(k); 5 C.F.R. 550.113; *Alexander v. U.S.*, 28 Fed.Cl. 475 at 484-487, 125 Lab.Cas.P 35,814 Fed.Cl. (Apr. 30, 1993). For example, an 8.5-hour shift, from 8:00am to 4:30pm, has an unpaid meal period. An 8:00am to 4:00pm shift does not have an unpaid meal period. Nonexempt employees are authorized to claim 0.5 hours for their meal period whenever the daily shift schedule includes a 0.5-hour meal period. The 0.5 hours unpaid meal period can be claimed regardless of whether or not the employee actually discontinues work during the meal period. Currently, non-supervisory field employees in positions at the grade GS-12 level or lower (Deportation Officers, Detention Enforcement Officers and Electronic Technicians), as well as Supervisory Detention Enforcement Officers at the GS-9 level or lower, are eligible for FLSA pay.

Refer to 5 C.F.R. 550.121-.122, 550.131-.132, 550.171 and 550.172, as well as AM 1.3.107 Premium Pay other than Overtime, attachment A; and the Office of Personnel Managements website on Pay Administration (b)(2)High, for information and computation of night differential, Sunday work and holiday work as they relate to the aforementioned categories of overtime. Hours of night, Sunday, or holiday work are included in determining the total number of hours of work in an administrative workweek for overtime pay purposes. Employees may earn night pay for overtime hours scheduled in advance of the workweek as long as the circumstances surrounding the overtime hours worked meet the requirements in 8 C.F.R. 550.121 and 550.122.

#### 43.4 Work Eligible for Overtime Payment.

(a) General. Employees are often given tasks that cannot be completed during regular duty hours. Oftentimes, the volume of work to be completed cannot be managed within a normal shift or the activity must take place during a time that is outside of normal business hours. When managers are confronted with assignments that warrant the use of overtime, they become responsible to ensure it is monitored and reported correctly. Assignments that are routinely managed through overtime compensations should be

evaluated for personnel reassignments or schedule changes that permit the use of regular duty hours, whenever possible.

(b) Categories of Overtime Work. Listed below are basic categories of detention and removal operations work that are eligible for overtime compensation:

Duty by employees engaged in surveillance, arrest and transportation activities including the guarding of aliens during their conveyance.

Duty necessitated in quelling riots or serious disturbances that cause a change in routine methods of administration.

Duty necessitated by major systems, facility or transportation breakdowns.

Duty in connection with the examination and landing of persons arriving in the United States whether such duty is pursuant to the Act of March 2, 1931, or 5 U.S.C. 5542.

Duty necessitated by failure of a critical element or elements in a radio communications system.

Duty resulting from established requirements that command centers and communications offices, including telephone switchboards, remain open more than eight (8) hours per day.

Duty in connection with the preservation of Government property necessitated by emergent incidents or unexpected calamity.

Duty by interpreters occasioned by emergent conditions.

Duty in connection with the acceptance of a delivery bond and/or processing an alien for intake or release from custody.

Duty in connection with the reduction or elimination of workloads or backlogs that cannot otherwise be accomplished by the reassignment or rescheduling of personnel.

(c) Call Back Assignments. Two hours of overtime compensation will be allowed whenever an employee is required to report to a designed location in the field or to his/her post of duty for overtime work that does not immediately precede or follow a tour of duty within their basic workweek. See 8 C.F.R. 550.112(h). In this type of situation, an employee is required to return to the duty post after having departed. In a second type of situation, an employee is called in on a day that she or he was not scheduled to work. An employee who is required to perform a call back assignment scheduled in advance of the administrative workweek is entitled to claim 45 Act overtime for the time actually worked, regardless of being certified AUC eligible. However, an AUC certified employee who is required to perform a call back assignment within the administrative

workweek based on an unexpected or unscheduled event must claim AUO for overtime compensation.

#### 43.5 Time in Travel Status.

(a) **Travel Within Regularly Scheduled Administrative Workweek.** Time spent by an employee on official travel, within or away from the official duty station, is deemed to be time within that employees hours of employment when the time spent traveling is within the employees regularly scheduled administrative workweek. 5 C.F.R. 550.112(g)(1).

(b) **Travel Outside Regularly Scheduled Work Hours Under 45 Act.** When travel occurs outside the regularly scheduled administrative workweek, only the following time is considered employment for overtime purposes under 5 C.F.R. 550.112(g)(2).

Time spent performing work while traveling. For example, driving a vehicle in performance of official duty or escorting aliens from one location to another.

Work that is incident to the travel and is performed while traveling. For example, deadheading to an officers official station after delivering a busload of aliens to another location.

Work that is carried out over arduous conditions. For example, traveling to a location accessible only by foot to service a repeater station.

Results of an event that could not be scheduled or controlled administratively. This includes travel by an employee to such an event and the return travel from the event to the employees official duty station. For example, travel to make emergency repairs at the repeater station.

An employee who is certified as AUO eligible must claim AUO for the above, if the work is unscheduled and occurs within the same administrative workweek. Other types of overtime may be claimed if the work is scheduled in advance of the beginning of the administrative workweek.

An employee needs to meet one of the conditions mentioned above to qualify for travel related overtime compensation.

For example, two Detention Enforcement Officers are required to escort an alien from Baltimore to Accra, Ghana. Both officers have a regular tour of duty from 7:00am to 3:30pm. The officers leave their post of duty in route to the airport with the alien at 2:30pm for a 5:00pm flight. They arrive in Accra, Ghana at 10:00am Baltimore time, drop off the alien at the designated location, and arrive at their hotel at 12:30pm Baltimore time. The officers depart Accra, Ghana the next day on an 8:00am flight, having arrived at the airport at 6:00am, and arrived back in Baltimore at 12:00 midnight.

The precise moment in time when the supervisor became aware of the assignment is an important factor in determining how to properly calculate any overtime. A second issue of importance concerns the days of the week in which the travel is performed.

Consider what the overtime implications would be if the supervisor was notified on a Wednesday that alien escort travel would be required the following Monday. In this situation, the supervisor must change the employees work schedule during the following week to match the work to be done. The employees work schedule is changed from 7:00am to 3:30pm, to 2:00pm to 10:00pm. The supervisor then estimates the length of time required for the entire trip at 20 hours. The employee should be scheduled for overtime (45 Act) for the second 12 hours, that is up to 10:00am (EST) Baltimore time. However, in this example the trip took longer than expected, so the hours between 10:00am to 12:30pm must be recorded as AUO. The return trip would be paid at 8 hours regular time, starting 6:00am, which is the arrival at the airport, and having estimated the travel time at 20 hours, all the time on the return travel beyond the 8 hours regular time may be paid as scheduled overtime, if there are no unexpected delays. An employee certified as AUO eligible is compensated by AUO whenever the estimated length of time for travel is impacted by unexpected delays.

Next, consider what the overtime implications would be if the supervisor were notified on Wednesday that travel must take place on the next day. In this situation, it is impossible to meet the requirements for regularly scheduled overtime. However, the work schedule should still be changed to allow completion of the work to be performed. As a result, the first 8 hours of the travel should be recorded as regular pay, and the time after that should be recorded as AUO. Excluding the circumstances of a shift change, all the time spent traveling outside the scheduled tour of duty would be recorded as AUO.

Both of the above situations apply to travel involving an employee who is certified as AUO eligible. Whenever such travel involves an employee who is not certified as AUO eligible, scheduled overtime (45 Act, or title 5) will apply to all hours of work beyond regular hours.

The above example meets the criteria established under 5 C.F.R. 550.112(g), therefore the time the deportation officers spent away from their official duty station in travel status is deemed to be employment time. This is true for the following reasons:

The hours spent traveling are not totally within the employees regularly scheduled work week;

The hours spent outside the workweek do involve the performance of work while traveling;

The work requires activities incident to travel that involved the performance of work while traveling, e.g., the return trip home that followed the performance of work during the initial travel.

Therefore, since the travel meets one of the criteria of 5 C.F.R. 550.112(g), the time the officer spent traveling between 3:30pm and 8:30am on the first day and between 6:00am and 7:00am and 3:30pm and 8:00pm on the second day qualify for overtime compensation, as hours of work.

(c) Travel Outside Regularly Scheduled Work Hours Under the FLSA. Under 5 C.F.R. 551.422, time spent traveling outside regular work hours is considered hours of work if an employee:

Is required to drive a vehicle or perform other work while traveling (very similar to the provisions under the 45 Act, discussed above); 5 C.F.R. 551.422(a)(2)

Is required to travel as a passenger on a one day trip outside the duty station and the travel extends the employees time beyond the regularly scheduled work hours; 5 C.F.R. 551.422(a)(3);

Is required to travel as a passenger on an overnight assignment away from the official duty station during hours on non-workdays that correspond to the employees regular working hours. See 5 C.F.R. 551.422(a)(4).

An employee only needs to meet one of the conditions mentioned above to qualify for FLSA. For example, a Deportation Officer (nonexempt from FLSA employee) whose regular working hours are 8:00am to 4:30pm Monday through Friday is required to travel on Sunday, under conditions which do not meet the title 5 provisions such as escorting a deportee, with a departure at noon and arrival at the destination at 8:00pm. The 4.5 hours of the trip between noon and 4:30pm can be compensated, but the 3.5 hours between 4:30pm and 8:00pm are not. The fact that the employee travels outside his/her duty station as a passenger for an overnight assignment meets the condition; however, compensation is limited to hours that correspond to their regular shift.

(d) Danger pay allowance. (5 U.S.C. 5928) Danger pay is an allowance that provides additional compensation, above basic compensation, to all U. S. Government civilian employees who are assigned to a foreign duty post where conditions of civil insurrection, civil war, terrorism or wartime conditions exist. In order to qualify, these conditions must pose a potential threat of physical harm or imminent danger to the employees health and well-being. The percentage of compensation is based upon the level of danger and covers 15, 20, or 25 percent of basic compensation. The classification of Dangerous locations and the pay allowance percentages for those locations are set by the Department of State. Employees on detail at a danger pay post may be granted the Danger Pay Allowance for all days on detail at the prescribed post, but not for days of absence from the danger pay post. A detail requires a minimum of 4 consecutive hours commencing at time of arrival at the danger pay post. Employees transiting a danger pay post and who are inadvertently detained for 4 consecutive hours or more shall be considered on detail as well. An employee may receive danger pay allowance for a full day when he/she is detailed at least four hours of the day. In order to be considered on detail, the employee must be in work status during the consecutive hours that are being considered for danger pay. An

employee is not entitled to a danger pay allowance on days outside their regular workweek. Also, the 4 consecutive hours do not have to correspond to the employees tour of duty. For example, if an employee with a 40-hour tour of duty Monday through Friday arrives in a designated country at 2:00pm Friday afternoon and departs on Saturday (a non-work day) at 12:00 noon, the employee would be entitled to 1 day (8 hours) of danger pay for Friday. The specific rules governing the Danger pay allowance begin at section 650 of the Department of State Standardized Regulations

(b)(2)High

. A complete listing of danger pay locations for Federal civilian employees can be found at section 920 of the Department of State Standardized Regulation (Government Civilian, Foreign Areas). Please consult <http://www.state.gov/> for updates on danger pay locations.

#### 43.6 Travel and Work Schedules.

(a) General. Management is obligated to establish work schedules that correspond to the actual work requirements. In order to manage work requirements that are assigned to detention and removal operations, managers must often use various shift schedules to manage regularly scheduled work. Title 5 C.F.R. 610.111, 610.121, 610.122 and 610.123 provide information and guidance related to the establishment of a workweek, work schedules, variations in work schedules and travel on official time. Whenever possible travel during non-duty hours should be avoided.

(b) Compensation for Work Related Travel. Both 5 C.F.R. 550.112(g) and 5 C.F.R. 551.422 restrict compensation for travel time to specifically prescribed conditions. Generally, travel outside of work hours and corresponding hours on non-workdays will not be compensated when no work is performed. When travel outside of regular duty hours is unavoidable, the conditions governing payment and nonpayment described in this chapter must be observed.

(1) Air Travel. Alien escort duties involving air travel often present situations that are not confined to regular work hours (8-hour workday). When an employee is assigned air travel for the purpose of alien escort duties, the following general principles will be adhered to:

Supervisors will schedule assignments fairly and equitably among employees who are primarily responsible for escort duties.

Regular work hours shall be included in the assignment and shall be the first hours of the scheduled work.

An employee is only entitled to compensation while in work status, therefore, alien escort assignments that overlap non-workdays are not subject to compensation, unless work is performed on the non-workdays. For example, when travel exceeds the 40 hour non-overtime workweek, such as flight on a Friday when the employees regularly schedule workweek is Monday through Friday, time spent away on Saturday or Sunday is treated as a scheduled day off, if no work is being performed on those days. Overtime is

permitted only when an employee is engaged in work. There are no provisions for granting administrative leave on scheduled days off.

If an employee is required to fly back on his or her scheduled day off without a lay over period, overtime will be paid for the return travel time, e.g., Saturday travel for an employee whose regularly schedule workweek is Monday through Friday. If a lay over is provided and such travel takes place on Sunday, a change in workweek schedule may be used to allow 8 hours of regular time for travel, overtime as appropriate, and Sunday differential pay of 25% for the 8 hours of regular time. The change in workweek schedule should occur at least one (1) week in advance of the workday being effected, such change will also require the scheduling of two (2) consecutive days off for the rescheduled workweek.

A lay over period can be granted when air travel is direct between authorized origin and destination points which are separated by several time zones or if travel is outside the continental United States. A lay over not in excess of 24 hours may be authorized when air travel between the two points is by less than premium class accommodations and the scheduled flight time, including stopovers, exceeds 14 hours by direct or usually traveled routes (see 41 C.F.R. 301-10.124(h) and 41 C.F.R. 301-11.20). Lay over periods may be considered an administrative day if it occurs within the employees scheduled workweek. However, a lay over period may not be considered an administrative day if it occurs outside of the employees scheduled workweek (without compensation).

Whenever an alien escort assignment qualifies for overtime compensation, such overtime must terminate once the alien is delivered to the designated location and return travel is completed, or once the alien is delivered to the designated location and the employee arrives at his/her hotel to await return travel. Hours of work may only resume once the employee arrives at the airport for their return flight. An employee is entitled to claim an arrival at the airport up to two (2) hours prior to the scheduled departure time of the flight.

Overtime compensation that involves return travel must terminate once an employee reaches his/her duty station.

(2) Ground transportation. Providing ground transportation is another responsibility that often creates situations that cant be confined to regular work hours (8 hours workday). In many cases, these situations are unexpected and require the use of overtime to complete the assignment. When an employee is assigned to ground transportation, the following general principles will be adhered to:

Every effort will be made to schedule the assignment within a period of time that incorporates the employees scheduled hour of work. Except when the supervisor determines that the agency would be seriously handicapped in carrying out its mission or that cost would be substantially increased, otherwise the following shall serve as general guidance:

Individual changes in an employees workweek schedule are permitted when the assignment is scheduled one (1) week in advance of the workday being affected.

Less time is needed for such changes where there is a mutual agreement between the employee and the supervisors involved.

The employee will be notified of the change in tour of duty and reason for the change.

Time spent in preparatory or concluding activities shall be scheduled by a supervisor, when needed, and will be considered part of the assigned period of time for the assignment.

When overtime is required a quarter of an hour shall be the largest fraction of an hour used for crediting overtime hour. When irregular or occasional overtime is worked for less than a full fraction (e.g., for 7 minutes and less, the time is rounded down; for 8 minutes or more, the time is rounded up).

Overtime compensation that involves return travel must terminate once an employee reaches his/her duty station.

Chapter 25.14 of this manual provides specific information concerning outstanding policy and procedures that must be followed during land transportation.

## **Chapter 44: Significant Incident Reports**

### 44.1 Protocol on Reporting and Tracking Detainee Deaths

References:

Reporting Requirements for Significant Events, ICE memorandum, March 11, 2003; ICE National Firearms and Tactical Training Unit; and Reporting Unusual Incidents, Chapter 2.7 of the Inspectors Field Manual.

See Acting Assistant Secretary Garcias memorandum, Reporting Requirements for Significant Events, dated March 11, 2003 (Appendix 44-1). The memorandum establishes the policy and procedures that field officers and other employees will follow when communicating certain events of interest to the United States Immigration and Customs Enforcement (ICE), Department of Homeland Security.

With regard to written reports, continue to use the Services Significant Incident Report (SIR), Appendix 44-2, until official release of the ICE form.

See also Reporting Unusual Incidents, Chapter 2.7 of the Inspectors Field Manual and Firearms Policy in ICE National Firearms and Tactical Training Unit.

### 44.1 Protocol on Reporting and Tracking Detainee Deaths



# Chapter 45 INSpect

## 45.1 General

## 45.2 Guidelines and authority

## 45.3 Detention Operations

## 45.4 Removal Operations

## 45.5 Finding and Recommendations

Reference:

Regulations: 8 CFR 103.1(e)

Other: INSpect, memorandum signed September 10, 1996, Commissioner; Office of Internal Audit / INSpect Review Guide Detention Program; Office of Internal Audit / INSpect Review Guide Removal Program; Detention Management Control Plan; INS Detention Standards Manual (M-482); AM 5.5.104

### 45.1 General.

The INS Program for Excellent and Comprehensive Tracking (INSpect) is a top-to-bottom review of field operational activities. An INSpect review is designed to provide managers with a concise, thorough assessment of all operational programs and functions. INSpect focuses on those areas that are vulnerable to fraud, waste, abuse and mismanagement. The Office of Internal Audit (OIA) has been given the responsibility to organize and direct INSpect reviews. INSpect reviews are performed by review teams that consist of a cadre of trained OIA staff and personnel from various field offices who possess subject matter expertise. Each INS office will receive an INSpect review at least once every 2-3 years. The reviews are conducted on-site and usually require 1-2 weeks time to complete.

### 45.2 Guidelines and Authority.

Pursuant to 8 CFR 103.1(e), the Director of Office of Internal Audit (OIA) is delegated the authority to conduct various reviews to evaluate the efficiency and effectiveness of INS operations. On September 10, 1996, the Commissioner of the INS issued a memorandum that directed full-scale implementation of INSpect reviews under the guidance of OIA. AM 5.5.104 describes the personnel that comprise an INSpect review team and the procedures that will be followed during a review. An INSpect review team utilizes a formal auditing process that ensures quality and accountability throughout INS. INSpect reviews are also an effective method for Service-wide sharing of lessons learned and best practices.

### 45.3 Detention Operations.

One of the most common methods used to monitor detention operations are on-site evaluations. During an INSpect review both Service and non-service detention facilities are evaluated. An INSpect review for Service detention facilities will typically focus on physical layout of the facility, detention and security control procedures and confinement conditions. Other activities may be evaluated based on complaints or reported weaknesses warranting investigation. The INSpect Review Guide for Detention Program serves as the primary reference guide for on-site reviews. Specific details about this guide can be found at (b)(2)-High Deficiencies observed by the INSpect review team are reported as findings on the INSpect review worksheet.

An INSpect review for contracted detention facilities may also involve detailed on-site evaluations. Typically, only contracted detention facilities that have serious complaints or known weakness will receive a detailed on-site evaluation by an INSpect review team. When such evaluations are warranted, OIA will make the necessary notification to the contractor through the field office having jurisdiction over the facility. In the absence of directives from OIA to investigate a particular complaint or known weakness, the INSpect review team will refer to the Service Contract Facility Inspection Report (Form G-324a). The Form G-324a is used to document the contractors compliance with the INS Detention Standards.

The Detention Management Control Plan (DMCP) requires that certified Jail Inspectors annually inspect each contracted detention facility used to house detained aliens (see Chapter 25). Like INSpect team members, Jail Inspectors are subject matter experts who are intimately familiar with policies, procedures and regulatory requirements that govern detention operations. Deficiencies that are discovered during a Jail Inspection are scheduled for follow up investigations to measure correction and ensure continued compliance with the INS Detention Standards. The INSpect review team will review the field offices records to determine if they have timely completed the Form G-324a. The INSpect review team will conduct a status investigation concerning all required corrections or follow up issues listed on the Form G-324a. An INSpect team member can conduct a walk-through at the contract detention facility for the purpose of verifying the status of corrections or follow up issues listed on the Form G-324a, if necessary. Issues that remain problematic will be reported as findings on the INSpect review worksheet.

### 45.4 Removal Operations.

An INSpect review for removal operations involves a concise evaluation of case management and docket control. The following categorizes the major areas of work that will be closely examined by the INSpect review team:

- Removals and docket management

- Institutional Removal Program (IRP)

Post Order Custody Review

Bond Management

National Crime Information Center (NCIC) Entries

The INSpect Review Guide for Removal Operations manual shows the criteria used to evaluate removal operations. Specific details about this guide can be found at

(b)(2)High

Updated and accurate DACS information, as well as case files, are the primary focus for an INSpect review on removal operations. Field offices should prepare by ensuring that DACS is properly maintained and that relevant documentation is listed in the related case file. Field offices are also evaluated on their ability to execute final removal orders expeditiously. Travel document requests and country clearances are also two key processes that will be evaluated for compliance with outstanding policy and procedure, (see Chapter 16, for procedures).

IRP will be evaluated in a similar manner in terms of removals and docket management. For the purposes of INSpect review, an IRP evaluation will only apply to dedicated IRP sites. Chapter 11 of this manual provides information about the IRP procedures.

Field offices will be evaluated to determine if Post Order Custody Reviews (POCR) are conducted for aliens who are detained in Service custody to ensure that their detention is justified and that it is in compliance with governing laws and regulations. Chapter 17 of this manual provides specific information concerning outstanding policy and procedures that must be followed for POCR.

Field offices are required to deposit, cancel and breach immigration bonds in accordance with outstanding policy. Bond management will be evaluated for compliance with Field Financial Procedures (see Chapter 12, for procedures). Generally, the review will focus on following responsibilities for effective bond management:

Are all new cash and surety bonds being forwarded to the Debt Management

Center within five working days?

Are bonds cancelled or breached within thirty days of the effective date?

Are bonds reviewed annually to determine whether it is still required?

Field offices will also be evaluated for their compliance with national NCIC program. Chapter 4.7(b) of the Special Agents Field Manual contains important information concerning the use of NCIC. Field offices will be evaluated concerning their ability to respond to NCIC hits. Field offices will also be evaluated regarding their ability to

provide timely submissions of eligible cases to the Law Enforcement Service Center (LESC) for NCIC posting.

#### 45.5 Findings and Recommendations

(a) Team Report. Deficiencies and corrections that are observed by the INSpect review team are reported on Finding and Recommendation Worksheets. Findings and recommendations fall into three general categories:

significant,

best practices, and

advisory.

Findings are problem areas that warrant the attention of higher management for action and resolution.

The INSpect team will provide the field office an assessment for each finding that is reported. The assessments are fairly general statements that give a synopsis of each issue. The INSpect team will make recommendations to the field office on how to resolve findings, when appropriate. Findings that are beyond the ability of the field office to correct or correct on its own will become significant findings. Significant findings are reported as areas of concern in the INSpect Final Report. A best practice is a type of significant finding. However, in this situation, the INSpect Review Team has found something of a positive nature that should be shared throughout the Service. Best practices are also reported in the INSpect Final Report. Advisory findings normally do not have a significant impact and the field office can usually make adjustments to correct these findings.

(b) Field Office Follow-up. The field office must follow-up on the list of recommendations for corrective actions agreed to in response to an INSpect review. The INSpect Review Team will provide the field office the list of recommendations for corrective actions. This information is usually provided during the closeout session or within a reasonable time afterwards. The field office should maintain close communication with the INSpect Review Team Leader, in order to provide informational updates concerning corrective actions that are completed prior to issuance of the INSpect Final Report. The list of recommendations for corrective actions given to the field office prior to the INSpect Final Report also provides an excellent opportunity to identify responsible parties who will complete each needed corrective action. It will be helpful to develop a matrix to list the recommendations for corrective actions, responsible parties and the corrective actions taken (see [Appendix 45.1](#) and [Appendix 45.2](#)). This step will help you track the corrective actions taken and to apply call-up dates for their completion, if necessary. Follow up information that is given to the INSpect Review Team Leader can become a part of the INSpect Final Report.

# DRO Policy and Procedure Manual

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## **Appendix 1-1 Table of Addresses and Telephone Numbers**

Office of Detention and Removal  
 801 "I" Street, NW, Suite 800 & 900 Techworld  
 Washington DC 20536  
 (202) 305-2734

11-1

DACS Help Desk (202) 732-(b)(2)High

DHS Desk (888) 347-(b)(2)High

12-1

Debt Management Center  
Bonds Branch (802) 288-7600

(b)(2)High

16-1

United States National Central Bureau

(b)(2)High

Telephone: 202-305-(b)(2)High

Fax: 202 616-8400

16-2

Canadian Embassy  
501 Pennsylvania Avenue NW  
Washington DC 20001  
Telephone: 202-682-(b)(2)High  
Fax: 202-682-7701

Peace Bridge, Buffalo, NY  
<http://www.peacebridge.com/>  
Refugee Processing Unit  
Fort Erie Port of Entry  
68 Goderich Street  
Fort Erie, ON L2A 5X4  
(905) 871-(b)(2)High  
FAX 871-568

16-3

Omega World Travel  
(800) 680-0964 (888) 451-8777 (414) 325-5006

16-4

ation System (JPATS)

(b)(2)High

(816) 467 (b)(2)High  
FAX 467-1984

19

LESC Duty Officer (802) 872 (b)(2)High

National Communications Center (b)(2)High

(b)(2)High

(800) 973 (b)(2)High

34-6

FBI-CJIS  
1000 Custer Hollow Road  
Clarksburg, WV 26306

34-6

Royal Canadian Mounted Police  
Canadian Criminal Records Information Services  
Record Analysis Services  
1200 Vanier Parkway  
Ottawa, ONT K1A 0R2  
Telephone: 613-998 (b)(2)High

34-7

Biometric Support Center - East  
Department of Homeland Security  
1616 North Fort Myer Drive, 8th Floor  
Arlington, VA 22209  
Telephone: 202-298 (b)(2)High  
Fax: 202-298-5091

Biometric Support Center - West  
Western Identification Network - Automated Fingerprint Identification System  
(WIN/AFIS)  
Department of Homeland Security

(b)(2)High



US Border Patrol, AFIS Building 6 (street address)

(b)(2)High

(b)(2)High

Fax: 619 498-9978

## **Appendix 2-1 Table of Authorities**

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DRO Personnel (To be developed)

History

The Detention and Deportation Program, now the Office of Detention and Removal (DRO) was established in a 1955 reorganization of the INS to carry out a mission first articulated in the Alien and Sedition Acts of 1798. The Alien and Sedition Acts included the earliest deportation legislation, which empowered the President to order the departure from the United States of all aliens deemed dangerous. Legislation since then has expanded the detention and removal operations and redefined the classes of aliens to be deported or excluded but the basic mission remains the same: remove all removable aliens.

The Immigration and Nationality Act (INA) of 1952 expanded the Federal expulsion power to include a wider category of aliens. The INA listed 19 general classes of deportable aliens and provided for exclusion, at the time of application for admission, to the United States on health, criminal, moral, economic, subversive, and other grounds. The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 expanded the number of crimes that made people subject to removal. It also eliminated the INS discretion to release certain aliens by requiring that virtually any non-citizen subject to removal on the basis of a criminal conviction, as well as certain categories of non-criminal aliens, be detained without bond. As a result of these acts and other legislation the INS is required to detain and remove a much larger and more diverse population. The current population requires unique facilities, procedures and

management of people by risk and criminal category as well as nationality, health and all those with other special needs.

The Department of Homeland Security, established on March 1, 2003, is committed to protecting the United States from terrorist threats through the rigorous and strict enforcement of the nations immigration laws. The Department will seek enhancements in personnel and information technology to aggressively enforce our immigration laws that will result in significant increases to the workload and services provided by the Office of Detention and Removal (DRO). DROs mission is critical to the immigration enforcement process and provides the final link in securing the borders of the United States. Our plans, operations and resource requests will be fully integrated with all other immigration enforcement programs and initiatives to maintain the integrity of the immigration process, improve border security, prevent the growth of and reduce the numbers of immigrants illegally residing in the country. Our management and staff will use DROs Strategic Plan 2003-2012: Endgame and this business plan to ensure that resource requests and operations are properly and fully aligned with all immigration enforcement activities and initiatives. We will follow these plans to ensure that we manage and maintain an effective detention and removal program, and that we continue to execute our part in the overall immigration enforcement process.

#### Vision and Mission Statements

The Director, Office of Detention and Removal, in conjunction with his staff, developed a Vision to guide the efforts of the program for the next ten years. This vision is focused on the development of the infrastructure, resources, personnel and leadership necessary to developing, maintaining and sustaining a Program that will accomplish its mission efficiently and effectively now, for the next ten years, and beyond.

#### DRO Vision:

Within ten years, the Detention and Removal Program will be able to

fully meet all of our commitments and mandates from the President, Congress and the American People.

To make this happen will require:

Visionary leadership, at all levels of the organization;

An effectively trained and educated professional workforce;

The right levels of the right resources such as personnel, facilities, and support infrastructure;

Effective, responsive, and accurate command, control, communication, computers and intelligence systems that truly support our enforcement requirements and improve the way we do business;

Thoughtful and thorough planning, and effective operational execution.

Recent events and political initiatives have emphasized the significance of DROs mission and the critical need to restore some certainty to the removal of aliens found to be removable. Our mission is critical to the immigration enforcement process and provides the final link, the Endgame, in securing Americas borders.

#### DRO Mission:

Promote the public safety and national security by ensuring the departure from the United States of all removable aliens through the fair and effective enforcement of the nations immigration laws.

#### Overview of Operations

The Immigration and Nationality Act (INA) grants aliens the right to a removal proceeding before an immigration judge to decide both inadmissibility and deportability. Aliens can be removed for reasons of health, criminal status, economic well-being, national security risks and others that are specifically defined in the act. An immigration judge weighs evidence presented by both the alien and DHS, assesses the facts, considers the various factors, and renders a decision that can be appealed to the Board of Immigration Appeals. When the decision rendered is to depart the country, DRO takes over the responsibility to facilitate the process and ensure the alien does, in fact, depart. The process includes coordination with foreign government and embassies to obtain travel documents and country clearances, coordinating all the logistics and transportation necessary to repatriate the alien and, when required, escort the alien to his or her home of record.

Integral to making America more secure, DRO provides the final step in the immigration enforcement program. To accomplish this, DRO must be vigorous in its efforts to provide services equal to the demand and commensurate with efforts expended by other enforcement programs and agencies. DRO must increase its overall number of removals, annually in order to thwart and deter continued growth in the illegal alien population. Achieving this result is dependent upon completion of all initiatives within both core business functions and accomplishing milestones in three key areas. Moving toward 100% rate of removal for all removable aliens allows DRO to provide the level of immigration enforcement necessary to keep America secure.

The primary responsibilities of the DRO program as part of the DHS immigration and law enforcement mission are to provide adequate and appropriate custody management to support removals, to facilitate the processing of illegal aliens through the immigration court, and to enforce their departure from the United States. Key elements in exercising

those responsibilities include: identifying and removing all high-risk illegal alien fugitives and absconders; ensuring that those aliens who have already been identified as criminals are expeditiously removed; and to develop and maintain a robust removals program with the capacity to remove all final order cases issued annually thus precluding growth in the illegal alien absconder populations. Simply stated, DROs ultimate goal is to develop the capacity to remove all removable aliens.

#### Process Overview:

Aliens will be apprehended at Ports of Entry (POE) by Bureau of Customs and Border Patrol (CBP) inspectors, between POEs by CBP border patrol agents, and anywhere in the interior of the United States by Bureau of Immigration and Customs Enforcement (ICE) investigators, CBP agents, local law enforcement officers and DRO Officers. Once apprehended, appropriate action will be taken to identify the alien, determine immigration status and begin necessary steps to process the alien for removal. After an apprehension or inadmissible determination is made, an alien will be placed in detention to be processed for removal, released with certain constraints, or removed. The Department of Homeland Security (DHS) maintains on-site holding facilities for the temporary housing of aliens. Initial authority lies within apprehending programs of each bureau to determine whether an alien will be removed, released, or detained.

Once detention is ordered, an alien must be transported from the point of arrest to a processing center or DRO field offices. During processing, identification and paperwork on the alien are completed, personal belongings are documented, and a detention facility is designated. The alien is transported to the appropriate detention facility and placed based on the categorization of his/her situation (family, juvenile, criminal, asylees, etc). If there is no significant risk of flight or danger to the community, an alien can also be released on his/her recognizance, bonded or paroled into the community.

An alien can also be immediately removed from the US. This outcome happens most often with apprehensions along the Mexican border. One method of removal is a voluntary return or voluntary departure. This procedure is common with non-criminal aliens who are apprehended by the CBP during an attempted illegal entry to the US. Under the process of voluntary return/departure, illegal aliens agree that their entry was illegal, waive their right to a hearing, and then are removed from the US. Aliens who have agreed to a voluntary return/departure can be legally admitted back into the US in the future without penalty.

Another common procedure used by CBP inspectors at POEs is expedited removal. DHS uses this process with aliens arriving at POEs who illegally attempt to gain admission by fraud, misrepresentation, or improper documentation. Unlike voluntary returns, expedited removals have penalties that restrict the alien from re-entering the US for specified timeframes. Aliens who re-enter the US after being removed through the expedited removal process subject themselves to felony convictions and time in jail.

As reflected in the workflow model below, when an apprehended alien decides to exercise his/her right to a hearing, the alien must await proceedings before an immigration judge (IJ). This process takes place under the auspices of the Executive Office of Immigration Review (EOIR). There are a number of potential outcomes to these hearings.

The most common outcome is a final order of removal. In such instances, the Immigration Judge determines that an individual is ineligible for legal admission into the US and must face removal. Reinstated final orders (a final order upheld that was issued in the past) are a variation of the same procedure. Violating the conditions of a final order carries several penalties, possible fines, imprisonment for up to 10 years, and a ban on future legal entry. The ban is permanent for aggravated felons and up to 20 years for other aliens. The imposition and extent of these penalties depends upon the circumstances of the case.

Conversely, aliens can also be granted relief and/or asylum as a result of their hearing. They can be permitted to withdraw their application for admission, which lessens the penalty for illegal entry. Also, they can have their case terminated outright.

Appeals of immigration hearings fall within the jurisdiction of the Board of Immigration Appeals (BIA). Aliens who may lose legal status by being removed from the US typically pursue these proceedings. BIA decisions can be appealed to the US Courts of Appeals; thus moving from the administrative law process in the Executive Branch to the US Courts for a final decision. The final authority for immigration appeals is the US Supreme Court. The time it takes to proceed through the appellate process can be significant and further places a burden on DRO to provide long-term detention.

#### Strategic Planning (DRO Strategic Plan, 2003-2012: Endgame)

The key to sustained program success is the development of a sound and logical planning process that will drive operations and ultimately resource requirements. DRO chartered the strategic plan-working group (SPWG) to develop the products needed to write its first ten-year strategic plan and monitor its implementation and execution. Drafting DROs Strategic Plan 2003-2012: Endgame was the first step in this process. DROs ultimate goal however is not only to develop and implement a strategic plan but to routinely integrate strategic thinking with operational planning which will then drive resource requirements and budget formulation.

With the strategic plan in place, DRO is developing its first five-year budget supported by this five-year business plan. Endgame provides the long-term strategy for achieving DROs golden measure which is to remove all removable aliens. The business plan provides the critical milestones, performance measures and resource requirements needed to get there. This business plan serves as the tool to implement the strategy and monitor DRO performance in the coming years. DRO will engage in a cyclical process where performance is continually measured against projections and resources received to modify and adjust operations, plans, and budgets appropriately.

## DRO Planning Process

The key to sustained program success is the development of a sound and logical planning process that will drive operations and ultimately resource requirements. DRO chartered the strategic plan-working group (SPWG) to develop the products needed to write its first ten-year strategic plan and monitor its implementation and execution. Drafting Endgame, DROs 2003-2012 strategic plan was the first step in this process. DROs ultimate goal however is not only to develop and implement a strategic plan but to routinely integrate strategic thinking with operational planning which will then drive resource requirements and budget formulation.

With Endgame in place, DRO is developing its first five-year budget supported by this five-year business plan. Endgame provides the long-term strategy for achieving DROs golden measure which is to remove all removable aliens. The business plan provides the critical milestones, performance measures and resource requirements needed to get there. This business plan serves as the tool to implement the strategy and monitor DRO performance in the coming years. DRO will engage in a cyclical process where performance is continually measured against projections and resources received to modify and adjust operations, plans, and budgets appropriately.

## DRO Core Functions

All DRO work efforts can be captured within two core areas, other wise known as its core business functions: removals, and custody management and more specifically, by key processes within each as depicted in the following table.

### Removal

The removal of an alien from the United States based on a final order of removal.

### Custody Management

The act, manner, or practice of managing, caring for, supervising, or controlling the temporary holding of individuals charged with federal crimes or pending immigration hearings and removal proceedings and all applicable resources necessary to complete this function.

Identify: Identification of the case(s) and alien(s) requiring a direct enforcement response or action by DRO staff.

Locate/identify and obtain adequate detention space (traditional & non-traditional):  
Acquire sufficient and appropriate bed space to meet various detention needs.

Locate: Actions taken to determine the whereabouts of alien(s) for the purpose of apprehension, questioning.

Manage/monitor the detention population: Ensure detainees are properly classified for risk and placed accordingly.

Apprehend: The seizure, taking or arrest of a person on a criminal or administrative charge based on a violation of the immigration laws of the United States.

Manage/monitor detention space: Ensure facilities comply with recognized building and safety codes as well as national detention standards.

Process: Management of an aliens case from identification through removal. Will include updating aliens records in appropriate DRO enforcement databases, determination of appropriate enforcement action, and preparation/request of necessary documentation to initiate enforcement action.

Community/external relations: Build partnerships with principle stakeholders to facilitate and expedite the removal process, garner support from the community and market DROs role as critical to the immigration enforcement process and fundamentally different from traditional punitive incarceration.

Removal: The removal of an alien from the United States based on a final order of removal.

Internal integrity (internal audits/reviews): Develop a quality assurance program to ensure all DRO operations maintain the highest levels of productivity, professionalism, and quality.

Fleet and Transportation Management: DRO relies heavily on an extensive transportation program that utilizes both ground and air assets to fulfill its mission in completing domestic transfer of aliens as well as their removal from the United States. DRO will oversee and administer the acquisition, assignment, and disposal of vehicles and equipment to meet transportation needs.

A more detailed depiction of the core business functions as they relate to fiscal program elements follow. These program elements allow the Program to measure performance and build resource requirement along functional lines within its core business functions.

## Removals

The primary responsibilities of the DRO program as part of the DHS immigration and law enforcement mission are to provide adequate and appropriate custody management to support removals, to facilitate the processing of illegal aliens through the immigration court, and to enforce their departure from the United States. Key elements in exercising those responsibilities include: identifying and removing all high-risk illegal alien fugitives and absconders; ensuring that those aliens who have already been identified as criminals are expeditiously removed; and to develop and maintain a robust removals program with the capacity to remove all final order cases issued annually thus precluding

growth in the illegal alien absconder populations. Simply stated, DROs ultimate goal is to develop the capacity to remove all removable aliens.

**Traditional Removal Proceedings:** The Immigration and Nationality Act (INA) grants aliens the right to a removal proceeding before an immigration judge to decide both inadmissibility and deportability. Aliens can be removed for reasons of health, criminal status, economic well being, national security risks and others that are specifically defined in the act. An immigration judge weighs evidence presented by both the alien and DHS, assesses the facts, considers the various factors, and renders a decision which can be appealed to the Board of Immigration Appeals. When the decision rendered is to depart the country, DRO takes over the responsibility to facilitate the process and ensure the alien does, in fact, depart. The process includes coordination with foreign government and embassies to obtain travel documents and country clearances, coordinating all the logistics and transportation necessary to repatriate the alien and, when required, escort the alien to his or her home of record.

**Alternative Removal Processes:** The INA provides several alternative removal procedures to maximize efficiencies and expedite the removal process wherever applicable and appropriate.

Expedited removal can be exercised after the DHS orders the removal of aliens after inspection and subsequent findings of inadmissibility on grounds relating to fraudulent activity i.e. no documents, improper documents, fraudulent documents, or other forms of fraud). The expedited removal process is the only formal removal process that can be used when these are the only grounds of inadmissibility. This process also applies to aliens whose claims for fear of persecution are not found credible, and to aliens who claim certain types of status but immigration judges find do not have these types of status.

Administrative removal can be exercised by the Attorney General as an alternative to hearings conducted by immigration judges for certain serious criminal offenders. As a result, DHS may issue final administrative removal orders to certain aliens who have been convicted of one or more aggravated felonies and who are not lawful permanent residents.

Judicial removal is authorized to remove certain aliens at the request of the U.S. Attorney with DHS concurrence. U.S. district court judges have jurisdiction to enter judicial removal orders when sentencing aliens deportable based on certain criminal convictions. This procedure can only be used in the Federal courts.

Stipulated judicial removal is a judicial removal entered as a condition of probation or supervised release or both in a plea agreement between the alien and the US government. The alien will waive the right to notice and a hearing by agreeing for a removal order to be entered as part of his plea agreement (stipulation). A U.S. district court judge in a felony or misdemeanor case, or a U.S. magistrate judge in a misdemeanor case, may accept such a stipulation and enter a judicial order of removal.



Stipulated removal is exercised by an immigration judge when he/she enters a removal order without a hearing based on an agreement between the alien and the DHS. In some instances, a judge in a criminal case may consider the alien's agreement to be removed when the judge imposes a sentence for the criminal charge.

Reinstatement of removal orders are applied to aliens who illegally reenter the United States after removal. The original removal order is reinstated as of the original date and is not subject to being reopened or reviewed. Reinstatement of the removal order is mandatory if the DHS determines that the alien who reentered unlawfully is, in fact, the same person who was previously removed.

### Custody Management

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and other immigration laws authorizes and sometimes mandates that DRO detain illegal aliens who are charged with violating immigration law, have entered the United States illegally, or have been ordered to leave the country. These aliens are detained while their immigration proceedings are administered and facilitates their proper and expedient removal from the country when ordered to do so. DRO administers a national detention program that uses funding appropriated specifically for the care of these aliens and includes the transportation, housing, subsistence, medical care, and guard service necessary to provide safe and humane environments to the inmate population and detention staff. The responsibility begins when a detainee is brought into DRO custody and continues until the alien can be released into the community or removed from the United States. The detainee population is generated by multi-component investigative and prosecutorial efforts within the Department of Homeland Security.

DRO detains aliens for administrative purposes, not criminal and punitive, to ensure they comply with the immigration process. In particular, these aliens are detained because they are determined to be a threat to public safety or pose a significant risk of flight if released. Other factors that DRO considers in making detention determinations are similar to those reasons used to justify removal which include health, prior criminal history and the severity of their crimes, history of failure to appear for Court, equities in the United States and evidence of ties to the community, availability of relief from removal and the likelihood of relief being granted, and prior immigration history.

This detained population is inherently unique, requiring specialized knowledge and processes to safely and humanely hold in appropriate facilities and meet all operational demands. The DRO detained population includes illegal economic migrants, aliens who have committed criminal acts, asylum-seekers (required to be detained by law) or potential terrorists. These persons can be male, female, unaccompanied juveniles of either gender, or families. This diverse population necessitates different environments, standards, and management procedures within DRO facilities than that of other federal, state, county, or local correctional facilities. Additionally, detainees have unknown lengths of stay in custody because they are dependant on the speed of immigration court hearings, appeal review or removal processing.

Factors that DHS considers in making detention determinations include prior criminal history, the severity of the crimes for which the alien was convicted, history of failure to appear for Court, equities in the United States and evidence of ties to the community, availability of relief from removal and the likelihood of relief being granted, and prior immigration violation history. DRO detention policy sets forth guidelines for determining priorities in which aliens should be detained. This policy sets forth four major categories of aliens and classifies these individuals as for placement into high priority, medium priority, or lower priority detention.

Category I, mandatory detention;

Category II, includes security and related crimes, other criminals not subject to mandatory detention, aliens deemed to be a danger to the community or a flight risk and aliens smugglers;

Category III, includes inadmissible non-criminal aliens (not placed in expedited removal), aliens who committed fraud or were smuggled into the United States, work site apprehensions; and

Category IV, includes non-criminal border apprehension, other aliens not subject to mandatory detention, aliens placed in expedited removal.

Not every alien taken into DRO custody has to be placed into traditional or hardened detention facilities. Low threat and low risk aliens can be placed into non-traditional settings (halfway houses, intensive supervision) as they complete their immigration proceedings. These non-traditional methods or alternative programs provide a more cost effective solution to hardened detention facilities and free up bed space for those aliens who must be detained.

The alternative to detention program is a comprehensive array of alternative detention settings and methods that, when employed, will provide a more cost effective solution to ensuring that low risk individuals in immigration proceedings comply with their immigration obligations. Releasing these individuals from hardened and secure detention facilities and into controlled alternative environments creates bed space for those aliens who must be detained, and minimizes the management and oversight needed for those aliens in alternative settings. While bed costs in alternative settings equal those in traditional detention the logistics and special requirements needed to manage special populations such as families and non-criminal females are less intensive than managing that same population integrated into a traditional environment. Additionally, moving these unique populations out of traditional facilities frees up bed space exponentially as two rooms needed to house one family will be freed up to bed 2 and 3 times more individual aliens.

Current custody management initiatives include the establishment of halfway houses particularly suited to house families, female asylum seekers and non-criminal females. These dormitory style facilities are secured by staff only and have no fences, bars or

watch towers, providing a less restrictive and more humane atmosphere for individuals who are not releasable. With these facilities in place, the logistical strain for moving, placing, and housing females and families is removed from the mainstream, hardened detention environment. DRO will continue its research into available technology and methods in order to create and provide safe, secure and humane alternatives to detention.

Custody management is a key tool in the immigration enforcement process. Through an array of traditional and non-traditional detention methods, DRO ensures aliens complete their immigration proceedings and are removed when ordered to do so. Experience shows that aliens who are placed into traditional and non-traditional detention environments have high court appearance rates and high removable rates and achieving high removable rates, especially 100%, is DROs overarching goal.

## Supporting Functions

### Fleet and Transportation Management

DRO relies heavily on an extensive air and ground transportation fleet to complete the domestic transfer of aliens as well as their foreign removal. Transportation assets must also be in place to support the movement of aliens between facilities and courtrooms as required during their immigration proceedings. This transportation program includes the use of commercial and government aircraft (owned and leased via the Justice Prisoner and Alien Transportation System (JPATS)), as well as government owned ground transportation conveyances. The DRO vehicle fleet consists of a total of 2049 vehicles (248 buses and 1801 vans, sedans, and trucks).

All detainee transport vehicles are outfitted with appropriate security equipment to ensure the safety of the detainee, staff, and general public. Additionally, the DRO fleet consists of undercover vehicles, primarily sedans and mini-vans, outfitted as such in order to conduct alien absconder/fugitive operations.

During fiscal year 2002, JPATS conducted 897 DHS missions, which included 3,205 takeoffs and landings, utilizing 5,634 flight hours. Meeting this demanding schedule was a challenge considering the age of the aircraft under contract to the JPATS system during FY 2002. Newer, more capable aircraft should improve schedule reliability and capacity as they are acquired in FY 2003.

During FY 2002, the total passenger count was 81,437 for all the JPATS movements, including special missions. This exceeded the 78,000 to 80,000 passenger movements predicted at the beginning of the year. In addition to high security/sensitive missions following September 11th, DRO also continued the ongoing mission of the repatriation of aliens. The original prediction was to repatriate 12,000 aliens and DRO finished with a record year for moving 13,573 individuals to 9 different countries.

DRO will continue efforts to re-capitalize its ground fleet and institutionalize a comprehensive fleet management and replacement program. DRO will also evaluate

local, regional and national transportation demand to support development of a comprehensive transportation operating system that includes the optimal use of JPATS resources. As part of this effort, DRO will pursue a contract for secure air transportation services in support of the repatriation program. Once awarded, the contract is anticipated to facilitate the repatriation process, increase program security, improve staff efficiency, and reduce costs.

### Human Capital Management

This area has not been addressed either systematically or strategically in the past. Through the strategic planning process, DRO developed a strategic approach to human capital management. Providing the right employees with the right skills to perform their jobs is fundamental to operational effectiveness and affords them the opportunity to advance within the Agency. DRO has made it a priority to partner with HRD and Training to develop the programs to allow us to achieve this goal.

DRO will work with human resource experts to find and implement ways to increase job satisfaction through professional development and other areas. Position descriptions and job series will be continuously reviewed to ensure that personnel filling these positions are properly trained, that the position supports operational requirements and that the position and personnel are properly classified. Recent results from such an initiative is the reclassification of the Detention Enforcement Officer (DEO) position to that of an Immigration Enforcement Agent (IEA). This reclassification is necessary for completion of several of the strategies identified above. For example, for DRO to effectively manage the IRP, it must employ officers trained at a higher level and with greater authority than what is afforded the current DEO position. The IEA position will be a force multiplier for all immigration enforcement functions with its enhanced authorities and capabilities. This position maximizes DROs human resource assets by inspiring a more professional workforce with greater job satisfaction and higher recruitment and retention rates. This critical initiative will require a significant redirection of resources or new resources.

DRO is working with human resource experts to develop a career path plan that identifies the skills necessary to advance within in an occupation and the points to transition from occupation to occupation. DRO will also initiate a program to develop the leaders of the future through training and developmental assignments.

A robust officer corps can only be developed and maintained with high quality, focused and sustained training. Current initiatives in that arena include a fugitive operations program, and IEA transition training. Both programs directly support overall removal efforts in the fugitive operations and institutional removal programs.

### Infrastructure Renewal

Aside from efforts in fleet management, DRO is committed to reducing the \$500M backlog in construction projects. Every year, DRO works closely with HQ Facilities to develop and submit enhancement requests.

The project to establish an ENFORCE based data system to unify a number of systems is underway. The DRO part is the ENFORCE Removals Module (EREM). EREM will replace the Deportable Alien Control System (DACs) and is designed to improve data integrity and take advantage of existing data thereby reducing workload. The data captured will also be more closely linked to performance goals and their measurement.

#### FY 2003 Implementation Plan

### STRATEGIC OBJECTIVE 5.2: MAINTAIN PUBLIC SAFETY

Promote national security and public safety by combating immigration-related crimes and removing individuals, especially terrorists and criminals, who are unlawfully present in the United States.

#### Overall Strategy:

Since the terrorist attacks on September 11, 2001, INS has reviewed its law enforcement strategy in the interior of the United States. This strategic review builds upon the critical role INS plays in ensuring domestic security through investigations aimed at disrupting terrorist activity and the domestic networks that support them. In this new environment, the Investigations Program promotes and relies upon an increased interconnectivity among Intelligence, Border Patrol, Inspections and Overseas assets and capabilities in accomplishing its mission in both information-sharing and tactical operations. Externally, INS works more closely with other government agencies, including FBI and the Department of State, to extend the reach of immigration law enforcement to source and problem areas across the globe.

Accordingly, the strategic focus of the Investigations Program will continue to emphasize investigations, either under exclusive INS jurisdiction or jointly with other agencies that support the Administrations War on Terrorism. These include investigations under the umbrella of the Joint Terrorism Task Forces (JTTF), investigations to locate absconders and other immigration law violators whose arrest and removal would serve the national interest, investigations based on sensitive intelligence regarding criminal global smuggling organizations, investigations using traditional fraud and worksite authorities to ensure the security of critical national infrastructure industries and locations, and responses to local law enforcement officers who will play an increased role in domestic security.

In addition to the new counter-terrorism responsibilities, INS must maintain its basic mission requirements as well. These include the identification and removal of criminal aliens, the detection and prosecution of fraud schemes and other threats to the integrity of the legal immigration system, and the disruption and prosecution of organizations and individuals involved in worker exploitation and human trafficking within the United States.

Effective interior enforcement requires an aggressive strategy that focuses on attacking the system of illegal migration in the United States. The system depends on alien-smuggling organizations, fraud facilitators, unscrupulous employers, and corrupt attorneys and immigration consultants who seek to undermine our legal immigration system. Failure to adequately address any one of these areas leaves large gaps in the Services ability to control illegal immigration, and secure the integrity of the framework of legal immigration into our country. Hence, the FY 2003 Strategy continues to approach global illegal migration holistically. At the same time, the Strategy emphasizes increased coordination among border enforcement and intelligence agencies to work domestic investigations back to the source.

The criminal organizations that engage in alien smuggling and immigration fraud as well as foreign-born-terrorist organizations pose a significant threat to the public safety and national security of the United States. Seizing the assets of these organizations and individuals reduces their capital, thus affecting their ability to operate, and also takes away the profit incentive inherent in nearly all criminal activity. As a result of INS efforts many alien smugglers, fraud organizations, and facilitators were arrested and presented for prosecution; assets were seized; and aliens with a nexus to organized crime, violent gangs, drug trafficking gangs, or who have terrorist related affiliations, were apprehended. These efforts provide a significant public benefit.

In FY 2003, INS will continue its aggressive campaign to remove all removable aliens, with a concentrated focus on criminal aliens. INS will develop a fugitive operations program to identify, locate, apprehend and remove criminal aliens who have received final orders of removal and who have not presented themselves for final removal (absconders). INS will continue its Institutional Removal Program (IRP) to identify, locate, process and provide hearings for aliens within the criminal justice system and effect their expedient removal after their release from custody and/or incarceration. INS will also develop systems to monitor and track individuals released from custody to ensure their appearance for final removal. INS will continue its coordination and cooperation with both government and non-government organizations to facilitate removal efforts. INS will target its efforts to include the use of the National Crime Information Center to identify criminals and recidivists.

Another key element of INS enforcement mission is to remove illegal aliens from the United States. INS is legally required to remove aliens who have received formal removal orders or who have volunteered to be repatriated. A fundamental part of this mission is to ensure the removal of the criminal element in the alien population. INS is adopting new policies and procedures to improve the effectiveness of the Institutional Removal Program, a program designed to identify and remove incarcerated criminal aliens by means of administrative or hearing processes before their release from custody. Focusing on the criminal alien removals enhances the promotion of public safety.

Another management challenge is in the area of identifying and removing persons who are in the United States illegally, including the monitoring of alien overstays. Knowing who has entered and who has departed our country in real time is an important

element in enforcing our laws. The Data Management Improvement Act, passed in FY 2000, requires INS to develop a fully-automated, integrated entry-exit data collection system and deploy this system at airports and seaports by the end of FY 2003; at the 50 largest land ports-of-entry (POEs) by the end of FY 2004; and all other POEs by the end of FY 2005. The legislation also requires a private sector role to ensure that any systems developed to collect data do not harm tourism or trade.

#### Skills:

Achievement of this goal requires personnel to attain and maintain mandatory law enforcement skills including proficiency with firearms and various non-deadly force methods; expert knowledge of applicable Federal statutes, regulations, Executive Orders, policies and procedures, including rules of search and seizure, arrest authorities, and Federal Rules of Evidence. Personnel must maintain a high degree of interpersonal skills and problem solving and investigative abilities as well ethical and moral standards consistent with the organizations set of core values. They must possess strong computer skills with a variety of office productivity systems and software, as well as with specialized law enforcement and national security, computer databases. They must be able to operate a variety of motor vehicles. Personnel are employed in positions including the following: Criminal Investigators/Special Agents, Deportation Officers, Detention Enforcement Officers, Docket Clerks, IRP Directors, Special Agents, Investigative Assistants, Financial Analysts for asset forfeiture, Intelligence Agents/Officers, Attorneys, and Legal Technicians, analysts and other support staff.

#### STRATEGIC OBJECTIVE 5.2.1

##### SUB-GOAL TITLE: Promote National Security and Homeland Defense

STATEMENT OF GOAL: INS will play a major role in national security by making it the primary focus of its interior enforcement efforts, including worksite enforcement, fraud and Attorney General and Congressional initiatives intended to improve homeland defense.

#### Background:

In the days following the September 11<sup>th</sup> terrorist attacks on America, a renewed focus was placed on national security across the nation, within the federal government, and specifically for the INS. The Service, led by the National Security Unit (NSU) at headquarters and INS Joint Terrorism Task Force (JTTF) agents in the field has responded to a dramatically increased workload, crisis conditions, and time-sensitive multi-tasking with professionalism and dedication.

As a semblance of normalcy returns to the workplace in our changed world, it is incumbent upon INS to create strategies and fiscal year goals for fully engaging foreign threats to the nations security. While the NSU will continue to lead INS efforts in

combating terrorism, other branches within the Investigations program will also continue to make significant contributions to national security and homeland defense.

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## STRATEGIC OBJECTIVE 5.2.2

### SUB-GOAL TITLE: Enhance Public Safety through Criminal Alien Removal

**STATEMENT OF GOAL:** INS will focus on National Security efforts by aggressively campaigning to removal illegal aliens from the United States. INS will develop a fugitive operations program to identify, locate, apprehend and remove criminal aliens who have received final orders of removal and who have not presented themselves for final removal (absconders). INS will continue its Institutional Removal Program (IRP) to identify, locate, process and provide hearings for aliens within the criminal justice system and effect their expedient removal after their release from custody and/or incarceration. INS will also maintain effective and efficient control of the non-detained docket. These objectives are described in two task sub-sections below.

#### TASK: 2a) Removals

**STATEMENT OF TASK:** Promote the integrity of the immigration removals process, deter immigration violations, and reduce recidivism through cohesive enforcement strategies facilitating the location, apprehension and processing of illegal aliens,

especially criminals, to ultimately effect appropriate action to include prosecution, and/or removal.

#### Background:

A key element of the INS enforcement mission is to remove illegal aliens from the United States especially those who have received final orders of removal or who have volunteered to be repatriated. A fundamental part of this mission is to ensure the removal of the criminal element in the alien population. Focusing on the removal of criminal aliens promotes the assurance of public safety and the protection of our national security.

#### Strategies and Initiatives to Achieve the FY 2003 Sub-goal:

As a result of the impacts of September 11, 2001, INS enforcement assets have been redirected to support national security priorities reducing their availability for traditional enforcement efforts. Additionally, current national policy has reemphasized the importance of criminal alien removal and therefore rendered it a central focus of INS enforcement for FY 2003. Throughout FY 2002, the Office of Detention and Removal (DRO) developed a ten-year Strategic Plan. FY 2003 marks the first year of implementing the plan, and among those strategies and initiatives identified for FY 2003 are the following:

Work closely with Inspections, Investigations, Border Patrol, and the Executive Office for Immigration Review (EOIR) to ensure cases are processed expeditiously and removals are completed in a timely fashion;

Continue processing criminal alien-inmates through the Institutional Removal Program (IRP), at a reduced level of effort, and expedite their removal from the United States to the maximum extent practicable. In FY 2003, INS will commence the first phase in the transition of the IRP from being the responsibility of the Investigations program to DRO;

Continue coordinating with foreign embassies and consulates to reduce the time needed to obtain travel documents for aliens with final orders of removal;

Develop and implement a centralized ticketing program that will be a single source for coordinating and tracking escort procedures, travel information and related costs;

And continue efforts to elevate the professional level, job satisfaction, and retention and recruitment rates of the DRO workforce. INS will especially concentrate on developing advance training programs that will provide officers with those skills necessary to accomplish the Services mission in the evolving enforcement climate.

#### Major Assumptions and Issues:

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### STRATEGIC OBJECTIVE 5.2.3

**SUB-GOAL TITLE:** Preserve the Integrity of the Legal Immigration System.

**STATEMENT OF GOAL:** Investigative efforts will focus on the dismantlement of fraud organizations as well as the prosecution and apprehension of principals and facilitators that exploit the legal immigration system by creating an environment whereby aliens can obtain fraudulent documents, commit benefit fraud and/or identity theft in an effort to either enter and/or remain in the United States under false pretenses.

#### Background:

In furtherance of the INS support of counter-terrorism investigations, and as a result of the terrorist attacks of September 11, 2001, the anti-fraud efforts of the Investigations Program will target large-scale conspiracies in the form of fraud organizations and facilitators/ principals involved in benefit and document fraud. Unscrupulous individuals and/or facilitators frequently resort to fraud, misrepresentation, and other irregularities in the preparation of INS petitions, applications, and documents in order to enter the United States under false pretenses and, in some instances, for furtherance of their criminal activity. The INS must ensure the integrity of the Visa Process by identifying fraudulent applications and prosecuting those that are responsible for these acts. Maintaining focus on major fraud conspiracies increases the effectiveness of the anti-fraud program, which in turn provides additional support to other INS enforcement efforts against organized crime, terrorism, alien smuggling, and convicted criminals.

**Strategies and Initiatives to Achieve the FY 2003 Sub-goal:**



Certain benefit fraud schemes involve innocent victims caught up in immigration practitioner fraud e.g., fraud committed by unscrupulous immigration practitioners (both attorneys and non-attorneys) who target vulnerable and ill-informed aliens. INS field offices will be prepared to launch practitioner fraud pilots in Los Angeles and Chicago pending approval by the Department of Justice.

INS field offices will continue to vigorously seek prosecution of facilitators/principals with a nexus to document fraud investigations.

Investigations and ISD will implement the Joint Fraud Strategy in FY 03. The strategy balances assessment and prosecutions. The assessment is reviewing 10 different applications. Fieldwork pursuant to these leads will both verify fraud and prosecute the offenders.

#### FY 2003 Major Assumptions and Issues:

FY 2003 performance target levels have been set in direct response to the high level of production in Benefit/Document Fraud Investigations in FY 2002. All projected targets were exceeded substantially in FY 2002 despite the severe impact of 9/11 on resource allocation within INS Investigations Program. The FY 2003 performance targets are the result of that tremendous success and, barring the unforeseeable, reflect the expectation that INS Fraud Investigations will maintain this positive trend.

#### FY 2003 Performance Measures, Milestones and Targets:

Performance Measure: Present for prosecution benefit and/or document fraud cases

Target: 430

Performance Measure: Present for prosecution benefit and/or document fraud principals/facilitators

Target: 575

Performance Measure: Accept for prosecution benefit and/or document fraud cases

Target: Report Only

Performance Measure: Accept for prosecution benefit and/or document fraud principals/facilitators

Target: Report Only

#### STRATEGIC OBJECTIVE 5.2.4

SUB-GOAL TITLE: Protecting Authorized Labor

STATEMENT OF GOAL: The INS will protect the access to safe and profitable employment to authorized workers while limiting the work opportunities of illegal aliens by pursuing lead-driven investigations that involve alien smuggling, human trafficking, exploitation and other criminal offenses and substantive administrative violations leading to displacement of legal workers.

Background:

INS will focus its worksite enforcement investigations to:

Take administrative and/or criminal action against employers whose hiring practices are tolerant to employing unauthorized aliens.

Ensure domestic security by removing unauthorized aliens [security risks] from sensitive jobs where they have the potential of inflicting serious bodily harm or death to innocent people or severe damage to our public infrastructure and/or economy.

Ensure that businesses of national and local interest have a legal workforce.

An INS field office may initiate a WSE investigation of employers, where there is prima-facie evidence of egregious alien trafficking offenses, criminal violations, human rights abuses, or worker displacement. Worker displacement occurs when authorized workers are fired or not hired to make jobs available for unauthorized workers.

Strategies and Initiatives to Achieve the FY 2003 Sub-goals:

Consistent with the INS interior enforcement strategy, worksite enforcement investigations will focus on employers whose violations may involve alien smuggling; document, identity, and immigration fraud; human rights abuses; other related criminal offenses; and substantive (knowing hire or continuing to employ) administrative violations.

Responding to HQ or local initiatives, INS field offices will ensure domestic security, by removing unauthorized workers from positions where they have the potential to inflict serious bodily harm or death and/or inflict serious damage to infrastructure and economy.

When applicable, the INS will take administrative and/or criminal action against any employer found in violation of administrative and/or criminal provisions of Federal law or regulations.

The national security priority notwithstanding, INS field offices may initiate an investigation of employers, where there is prima-facie evidence of egregious:

Alien trafficking offenses

Criminal violations

Worker exploitation

Worker displacement (worker displacement occurs when authorized workers are fired or not hired to make jobs available for unauthorized workers), or

INS field offices may also initiate a WSE investigation on any employer, included, but not limited to businesses of national interest (BNI), if the investigation performs a significant community service.

INS field offices will also monitor the national unemployment rate.

FY 2003 Major Assumptions and Issues:

The FY 2003 targets developed in this section assume there will be no personnel enhancements for worksite enforcement. Also, due the immediate National crisis, it may be determined during the fiscal year that worksite enforcement resources will be diverted to other higher priority INS investigations.

Since 9-11, the INS has focused the vast majority of its worksite enforcement resources on investigations of businesses of national interest, a national security initiative. While very successful from a national security perspective, these investigations have resulted in no reported administrative or criminal actions against any employer. Therefore, the past year efforts make it difficult to measure our performance in the more recently traditional ways criminal presentations for prosecutions and substantive Notices of Intent to Fine (NIFs). FY 01 was the last reporting year that was not fully impacted by the WSE operational changes brought about by the events of 9-11. For that reason, the INS will use the FY 01 data in LYNX as its baseline for some of the below Performance Measures. The INS anticipates that 90% of the WSE investigations will target BNIs as opposed to lead driven investigations. And if the current pattern continues, they will result in far fewer administrative and/or criminal actions than were reported in FY 01. The vast majority of the investigations conducted in FY 01 were a direct result of a specific lead. In consideration of all of the facts outlined in this paragraph, these targets for FY 03 will be 10% of what was reported in FY 01, except for NIFs whose target is based on FY 02 activities.

## **Appendix 2-3 Detention and Removal Strategic Plan**

## **Appendix 2-4 End Game - Easy Reader**

## **Appendix 3-1 Threat Conditions Handbook**

## **Appendix 11-1 Creating an A File in the Deportable Alien Control System (DACS)**

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(b)(2)High

(b)(2)-High

## **Appendix 11-2 "A" File Construction**

## **Appendix 11-3 Use of New Special Class Codes in DACS, Memorandum, dated April 10, 2003**

U.S. Department of Justice

Immigration and Naturalization Service

HQOPS 50/12.8

Office of the Executive Associate Commissioner 425 I Street NW

Washington, DC 20536

April 10, 2003

MEMORANDUM FOR DISTRIBUTION

FROM: Johnny N. Williams

Executive Associate Commissioner

Office of Field Operations

SUBJECT: Use of New Special Class codes in DACS

Recently, the Office of Detention and Removal created (b)(2)High new special class codes (b)(2)High with the Deportable Alien Control System (DACS). These new codes are identified a (b)(2)High and can only be entered or deleted by (b)(2)High personnel. Additionally, these new codes will advise the field that the person has been identified as an absconder, that the person is listed in the National Crime Information System and that certain precautions should be taken when dealing with the case. Furthermore, these codes will support statistical reporting requirements as well.

Special Class code (b)(2)High consisting of approximately (b)(2)High cases, represents those cases in which the (b)(2)High has the lead. Those cases were identified in a memorandum from the Executive Associate Commissioner, Office of Field Operations, dated January 28, 2002. The criteria for these cases have not changed. To further assist the field in identifying these cases, various screens in DACS will have instructions such as: (b)(2)High 202-353 (b)(2)High (b)(2)High As stated, offices are to notify the (b)(2)High (b)(2)High Unit before making any decision or taking any action.

Special Class codes (b)(2)High are all other absconders. Special Class Code (b)(2)High identifies absconders with a final, but unexecuted order of removal, dated prior to (b)(2)High. These cases have been identified as the backlog cases that are the primary target of the permanent fugitive teams created pursuant to the memorandum issued on March 8, 2002, by the Deputy Executive Associate Commissioner, Office of Detention and Removal. Special Class Code (b)(2)High identifies absconders with a final, but unexecuted order of removal, dated after (b)(2)High. These cases are considered current absconder cases and are the primary responsibility of the individual deportation officers who maintain those cases on their dockets. Nothing in this memorandum, however, precludes either case from being pursued by any and all immigration officers who have the authority to make such arrests.

To further assist the field in identifying these cases, various screens in DACS will have instructions such as: (b)(2)High As stated, offices are to notify the (b)(2)High for guidance.

Questions regarding the use of these Special Class codes may be directed to the either the DACS help line or the Office of Detention and Removal, Director of Removal, or through the (b)(2)High

Attachment

DISTRIBUTION:

REGIONAL DIRECTORS

DEPUTY EXECUTIVE ASSOCIATE COMMISSIONER, ENFORCEMENT

DEPUTY EXECUTIVE ASSOCIATE COMMISSIONER, DETENTION AND  
REMOVAL

TRANSITIONAL FIELD COORDINATORS

CHIEF, BORDER PATROL

ASSISTANT COMMISSIONER, INSPECTIONS

DIRECTOR, LAW ENFORCEMENT SUPPORT CENTER

cc: Official File

HQDRO Chron File

## **Appendix 11-4 "Juvenile Aliens: A Special Population"**

### **Table of Contents**

This Manual represents Appendix 11-4 of the Detention and Removal Officer's Field Manual

- 1 Introduction-Juvenile Detention and Shelter Care Program**
- 2 Procedures for the Arrest and Detention of Juvenile Aliens**
- 3 Special Issues and Special Populations**
- 4 Nonsecure and Secure Juvenile Facilities**
- 5 Inspection Standards for Juvenile Shelter Care and Secure Juvenile Detention Facilities**
- 6 Transportation Requirements**
- 7 Legal Requirements- Representation**
- 8 Escapes and Other Emergency Incidents**
- 9 Medical Issues**

#### **Attachments:**

- Attachment 1- Jenny Lisette Flores, et al. v. Janet Reno Stipulated Settlement Agreement**
- Attachment 2- Perez-Funez Rights Advisal**
- Attachment 3- Special Use Forms**
- Attachment 3a: Referral for Home Assessment Form**
- Attachment 3b: Notice of Placement in Secure Juvenile Detention Facility**

- 1. Introduction-Juvenile Detention and Shelter Care Program**



Program Oversight and Direction. The Immigration and Naturalization Service's (INS') Juvenile Detention and Shelter Care Program is directed and overseen by the INS' National Juvenile Coordinator in the Office of Field Operations, Detention and Removals, Detention Operations Branch (HQOPS/DOB).

Funding for Juvenile Beds. Juvenile bedspace is often difficult to secure. Consequently, juvenile beds, regardless of location, are national beds and are available to all INS offices nationwide. Juvenile beds are categorized as either secure (secure or medium-secure juvenile detention facilities) or nonsecure (juvenile shelter care facilities, group homes, foster homes, etc.).

Primarily, the INS uses the following three types of contracting vehicles to secure juvenile bedspace:

1. Cooperative Agreements with private profit and nonprofit agencies, which pays for and provides guaranteed bedspace, whether it is used or not.
2. Intergovernmental Service Agreements (IGSAs) with local government entities.
3. Purchase Orders, used on occasion to handle emergencies or special circumstances.

Funding for juvenile beds secured through Cooperative Agreements is provided by HQOPS/DOB. Other contracts are funded at the Regional and District levels, with occasional assistance from HQOPS/DOB. It is important to note that all juvenile beds are in state-licensed facilities, which the INS is required to formally inspect each year.

The 2nd and 3rd contract types above enable the INS to pay only for those beds it actually uses, the number of contracted beds increasing or decreasing as needed. The effective use of these vehicles helps the INS to accomplish its mission and ensure that funding for juvenile bedspace is used to optimum efficiency. In addition, these contracting vehicles help the INS secure beds in various locations and provide for needed levels of security.

Flores v. Reno-Highlights of an Important Court Case. Jenny Lisette Flores, et al. v. Janet Reno was a class action lawsuit filed against the Immigration and Naturalization Service (INS) in 1985. It challenged several aspects of INS policy dealing with the arrest, processing, detention, and release of juvenile aliens in INS custody. Two decisions preceded the Flores v. Reno Settlement Agreement (the Flores Agreement) that is now in effect.<sup>1</sup> The Flores Agreement sets out nationwide policy for the detention, release, and treatment of juveniles in INS custody, and supersedes all previous policies that are inconsistent with its terms. The settlement agreement became effective on February 24, 1997 (see Attachment 1 for copy of Flores Agreement).

The Flores Agreement formalizes many common-sense principles governing the treatment of juveniles in INS custody and includes the following general policies:

- A juvenile is a person under 18 years old.
- Persons emancipated by a state court OR convicted and incarcerated for a criminal offense as adults are NOT considered juveniles.
- If a reasonable person would conclude that an individual claiming to be a juvenile is really an adult, that person shall be treated as an adult for all purposes, including confinement and release on bond

or recognizance.<sup>2</sup>

- All juveniles should be treated with dignity, respect, and special concern for their particular vulnerability.
- Juvenile aliens must be placed in the least restrictive setting appropriate to their age and special needs, provided that the setting is consistent with being able to ensure the juvenile's timely appearance in court and to protect his or her well-being and that of others.
- INS Officers are not required to release a juvenile from INS custody to a person or agency if the officer feels that the agency or person may harm, neglect, or fail to present the juvenile before the INS or the Immigration Court when requested.

## **2. Procedures for the Arrest and Detention of Juvenile Aliens**

Process juveniles for removal or voluntary departure in accordance with [8 CFR.236.3](#), regardless of whether ICE or another law enforcement agency took them into custody.

The procedures that follow clarify the differences between your role and the Juvenile Coordinator's as the case proceeds from arrest to detention to removal. (Expedited removal and withdrawal of application for admission are addressed in [§ 2.2](#), below.)

Note that, before apprehending any adult in the presence of a juvenile, you must take the time to learn the child's age and immigration status, the relationship between adult and child and, if other than parent-child, the parents' location and, if applicable, the name and address of a relative in the area.

With this information in hand, contact a Supervisory Detention and Deportation Officer. The Supervisory Detention and Deportation Officer will, in turn, contact the Field Office Director or Deputy for approval to proceed with the arrest.

If you expect media interest, prepare a Significant Incident Report.

### **2.1 Arrest**

2.1.1 After completing appropriate system checks, e.g., Central Index System (CIS), Deportable Alien Control System (DACs), Treasury Enforcement Communications System (TECS), National Automated Immigration Lookout System (NAIIS), the Arresting Officer should process juveniles expeditiously and complete the following documentation for inclusion in the alien file (A-file). These documents must be provided to all juvenile aliens, whether detained, paroled, or released. The Arresting Officer must be sure to explain the documents in the juvenile's native tongue in terms the juvenile can understand. Use the following checklist to ensure inclusion of all required documents.

" Report of Deportable Alien (I-213 and continuation).

The Arresting Officer should obtain as much detailed biographical information as possible (see inset for questions to ask when interviewing a juvenile). When completing the I-213, get the name, address, location, and telephone number of any or nearest relatives in the United States. Form should be signed by the

Arresting Officer and reviewing official. Place in file; no copy to juvenile.

" Notice to Appear (I-862) (original and copy).

For 13 and under, conservator<sup>3</sup> must sign certificate of service. The original and one copy is placed in the file; another copy is given to the juvenile. This form should be signed by the authorized issuing official. The certification of service on the juvenile alien is signed by the Arresting Officer and by the juvenile. If the juvenile is apprehended at a port-of-entry (POE) and a Notice to Appear (NTA) is being used, s/he should be charged under both Section 212(a)(7)(A)(i)(I) of the Act (as an alien not in possession of proper entry documents) and Section 212(a)(4) (as an alien likely to become a public charge). Other charges may be lodged as appropriate. As a general rule, juveniles should not be charged with Section 212(a)(6)(C) of the Act, unless circumstances show the juvenile alien clearly understood that s/he was committing fraud or was unknowingly involved in criminal activity relating to fraud.<sup>a</sup> This statement is from an 8/21/97 memo from the Office of Programs on "unaccompanied minors subject to expedited removal" to Management Team, Regional Directors, District Directors, Officers-in-Charge, Chief Patrol Agents, Asylum Office Directors, Port Directors, Director of Policy Directives and Instructions, ODTF Glynco, and ODTF Artesia.<sup>a</sup>

" Warrant of Arrest (I-200) (original and copy).

The original and one copy are placed in the file; another copy is given to the juvenile. This form should be signed by the authorized issuing official. The certification of service on the juvenile alien is signed by the Arresting Officer and by the juvenile.

" Notice of Custody Determination (I-286) (original and copy).

The original and one copy are placed in the file; another copy is given to the juvenile. This form should be signed by the authorized issuing official. The certificate of service on the juvenile alien is signed by the Arresting Officer and by the juvenile.

" Notice of Rights and Request for Disposition (I-770).

Ensure that all appropriate boxes are completed on both sides, with the alien's and Arresting Officer's signature. The original is placed in the file and a copy is given to the juvenile.

" Biographic Data for Travel Documents (I-217).

The original is placed in the file.

" Two sets of fingerprints or IDENT.

Only for juveniles 14 and older. Each set of fingerprints should include two FD-249 forms and one R-84 form. Both are placed in the file.

" Four frontal photographs.

All juveniles are to be photographed. Photos should be placed in the file.

" Orantes Rights (For El Salvadorans only) (I-284).

Explain the rights to juveniles of all ages. The Arresting Officer and juvenile both sign; place in file. When the juvenile is 13 years of age or younger, the Orantes Rights should be explained to the conservator by the Arresting Officer.

" List of local legal services.

One copy is placed in the file and one is given to the juvenile.

" Copy of Exhibit 6 (Notice of Right to Judicial Review from the Flores Settlement).  
Provide juvenile with a copy of Exhibit 6 and add it to the file.

" Any additional forms as required by local district policy.

2.1.2 If a decision to release is made at the time of arrest to release a juvenile, s/he must always be released to a qualified custodian (see [Section 2.4](#), "Release," for order of custodial preference).

2.1.3 Once a decision is made to formally detain the juvenile, the arresting officer must notify the District Juvenile Coordinator to arrange detention space and transportation to the appropriate facility, consistent with guidelines in the Flores Settlement (see [Section 6](#) for detailed transportation requirements). While awaiting transfer to an appropriate juvenile facility, juveniles must be held in a suitable area (see Sections [2.3.1](#) and [2.3.2](#)).

On March 1, 2003, pursuant to the Homeland Security Act, the Office of Refugee Resettlement (ORR) assumed authority for decisions related to the care and custody of Unaccompanied Child(ren)(UAC) in Federal custody. This includes their placement, transfer, and release.

Even so, DRO continues to have authority to take certain enforcement actions: voluntary returning a Canadian or Mexican national, immediate releasing the UAC to a parent or other adult relative, and permitting an older juvenile to withdraw a port-of-entry application for admission.

There has been no change to the current procedure, which requires you to contact a juvenile coordinator to coordinate placement in any case involving the decision to detain a UAC. Branch Juvenile Coordinators (formerly known as Regional Juvenile Coordinators) remain a vital link between field offices and HQDRO in these cases.

- To place a UAC in detention pending release, return to country of origin, or the outcome of proceedings, contact your Field Office Juvenile Coordinator (formerly known as District Juvenile Coordinator) for preauthorization. The Field Office Juvenile Coordinator will, among other things, determine the appropriateness of the facility you have in mind. Note that you must obtain preauthorization from the Field Office Juvenile Coordinator regardless of the UAC's anticipated time in detention.
- After approving placement, the Field Office Juvenile Coordinator will immediately complete and e-mail to the Branch Juvenile Coordinator a Case Action Worksheet (CAW). The Branch Coordinator will then e-mail the CAW to the HDRO mailbox ([Office, JuvenileOPS](#)) and the ORR mailbox ([orrducs@acf.hhs.gov](mailto:orrducs@acf.hhs.gov)). ORR will respond to all requests made by DHS via CAW. You may proceed according to instructions you receive from HQDRO.

Ask the juvenile for the following information and add it to the narrative of the I-213 Form:"

- Location of immediate family;
- Location and phone numbers of any friends or relatives in the United States or contiguous territory;
- Type of locale in country where juvenile was raised (suburban, rural, urban, etc.);

- Whom the juvenile lived with before leaving home;
- Length of time in transit, from home to the United States;
- Route of travel (e.g., countries, length of time spent in each, status in each, date of arrival at border, etc.);
- Destination in United States;
- Person whom juvenile was to contact in the United States and phone number;
- Present funds and anticipated method of support;
- If smuggled, the arrangements made;
- The health of the juvenile: are there any health problems admitted?
- Juvenile's language skill: (1) Spanish, English, etc. (2) Speak, read, write, understand?

2.2 Expedited Removal and Withdrawal of Application for Admission b These procedures are from an 8/21/97 memo from the Office of Programs on "unaccompanied minors subject to expedited removal" to Management Team, Regional Directors, District Directors, Officers-in-Charge, Chief Patrol Agents, Asylum Office Directors, Port Directors, Director of Policy Directives and Instructions, ODTF Glynco, and ODTF Artesia.b

If a decision is made to pursue formal removal charges against the unaccompanied juvenile, the juvenile will normally be placed in removal proceedings under Section 240 of the Act rather than expedited removal. If formal proceedings are initiated against an accompanying adult relative or legal guardian, the juvenile should be placed in the same type of proceeding (i.e., expedited removal or 240 proceedings) as the adult. However, withdrawal of application for admission by the juvenile should be considered whenever appropriate, even though the guardian may remain subject to formal removal proceedings.c From an 8/21/97 memo from Office of Programs on "unaccompanied minors subject to expedited removal."c

2.2.1 When dealing with unaccompanied juveniles who appear to be inadmissible under Section 212(a)(6)(C) or (7) of the Act, INS Officers should first try to resolve the case under existing guidelines. These guidelines permit granting a waiver, deferring the inspection, or employing other discretionary means, as appropriate, including withdrawal of an application for admission (see below).

2.2.2 Whenever appropriate, the INS should permit unaccompanied juveniles to withdraw their applications for admission rather than place juveniles in formal removal proceedings. In deciding whether to permit an unaccompanied juvenile to withdraw his or her application for admission, every precaution should be taken to ensure the juvenile's safety and well-being. Consideration should be given to such deciding factors as the seriousness of the offense in seeking admission, previous finding of inadmissibility against the juvenile, and any intent by the juvenile to knowingly violate the law. The decision made, the following steps should be carried out:

**For juveniles withdrawing their applications for admission:**

1. The INS Officer must be satisfied either that the juvenile is capable of understanding the withdrawal process, or that a responsible adult (relative, guardian, or Consular Officer when no relative or guardian is available) is aware of the actions taken and of the juvenile's impending return.
2. Whenever possible, Officers must attempt to contact a relative or guardian either in the United States or in another country regarding the juvenile's inadmissibility.4

3. Officers must ascertain the true nationality of the juvenile before permitting withdrawal of application. An important factor to consider is whether the port of embarkation to which the juvenile will be returned is his or her country of citizenship. A juvenile may not be returned or be required to transit through a country unwilling or unobligated to accept him or her. If the juvenile is being returned to a third country through a transit point, Officers must ensure that an immediate and continuous transit will be permitted.
4. Officers must make every effort to determine whether the juvenile has a fear of persecution on return to his or her country before permitting the withdrawal of application for admission. If the juvenile indicates a fear of persecution or intention to apply for asylum, or if there is any doubt—especially in the case of countries with known human rights abuses or turmoil—the juvenile should be placed in removal proceedings under Section 240 of the Act.
5. If there is no possibility or fear of persecution on return, and the juvenile is permitted to withdraw the application for admission, the INS Officer must notify the consular or diplomatic officials of the country to which the juvenile is being returned. Safe passage can then be arranged.
6. Following all notifications to family members and government officials, the juvenile may withdraw the application for admission.

2.2.3 Under the following limited circumstances, an unaccompanied juvenile may be placed in Expedited Removal Proceedings:

- the juvenile has, in the presence of an INS Officer, engaged in criminal activity that would qualify as an aggravated felony if committed by an adult;
- the juvenile has been convicted or adjudicated delinquent of an aggravated felony within the United States or another country, and the Inspecting Officer has confirmation of that order; or
- the juvenile has previously been formally removed, excluded, or deported from the United States.

2.2.4 For unaccompanied juveniles placed in expedited removal proceedings, the removal order must be reviewed and approved by the District Director, Deputy District Director, or person officially acting in that capacity before the juvenile is removed from the United States. This is in addition to the normal supervisory approval required of all expedited removal cases.

2.2.5 During processing of juveniles subject to expedited removal, all care and treatment provisions of the Flores Agreement (see Section 2.1) apply.

2.2.6 When juveniles have already received a final order of removal, whether in expedited removal proceedings or formal 240 proceedings, they may be placed in proceedings pursuant to 8 C.F.R. § 241.8, "Reinstatement of Removal Orders," provided they have made a new entry.

## 2.3 Detention

The District Juvenile Coordinator is responsible for placing juveniles in appropriate facilities, according to

the Flores Agreement (see Section 4, Nonsecure and Secure Juvenile Facilities) and for initiating family reunification efforts. S/he is also responsible for ensuring that facilities meet minimum required standards (see Section 5, Inspection Standards for Juvenile Shelter Care and Secure Juvenile Detention Facilities). The following procedures describe the next steps to be taken by the District Juvenile Coordinator in placing the juvenile.

2.3.1 Arrange to place juveniles in facilities that are safe and sanitary and consistent with INS' concern for the particular vulnerability of juveniles.

All post-arrest facilities, including temporary holding areas, will provide access to:

- toilets and sinks;
- drinking water and food, as appropriate;
- medical assistance (if the juvenile needs emergency services);
- adequate temperature control and ventilation;
- adequate supervision to protect juveniles from others; and
- contact with family members who were arrested with the juvenile.

2.3.2 Separate unaccompanied juveniles from unrelated adults whenever possible. If not immediately possible, an unaccompanied juvenile will not be detained with an unrelated adult for more than 24 hours.

2.3.3 If a juvenile cannot be immediately released (see Section 2.4), and no licensed program is available for immediate placement, s/he may be held by INS authorities in an INS contract facility with separate accommodations for juveniles, or in a state or county juvenile detention facility that separates them from delinquent offenders. Make every effort to ensure the safety and well-being of juveniles placed in these facilities (see Section 4 for further guidance on the use of secure juvenile detention facilities).

2.3.4 The District Juvenile Coordinator must file the juvenile's NTA with the appropriate office of the Executive Office of Immigration Review (EOIR). If possible, venue should be set at the final destination.

Note: It is important to remember that if a juvenile is 13 years old or under, the NTA must be signed by a conservator, i.e., the person who has physical custody of the juvenile.<sup>5</sup> (See boxes below for examples of how to establish venue according to location of facility space).

Example 1:

The NTA is served in Los Angeles, but appropriate facility and/or bed space can only be found in Chicago. Therefore, the juvenile is transferred to Chicago and venue is set: the original NTA is filed with the EOIR in Chicago.

Example 2:

The juvenile is placed in a facility in the same district where the NTA is served. Venue is established. If circumstances require a change of venue, contact the local District Counsel for assistance in filing with the court.<sup>d</sup> Information in 2.1.5 is from a memo dated 10/4/95 to all Regional Directors RODIRS; Regional Operations Liaison Officers (ROOPS) (RODDP); all DIDIRS (X-Foreign); all CPAs; INS Director of Training FLETC, GLYNCO, GA; INS Director of Training FLETC, Artesia, NM. From Joan Higgins, Assistant Commissioner of Detention and Deportation.<sup>d</sup>

2.3.5 The District Juvenile Coordinator enters and routinely updates each case into the Juvenile Alien Management System (JAMS) and ensures that the case is updated in the Deportable Alien Control System (DACS). The District Juvenile Coordinator will submit a copy of the JAMS juvenile data file to Headquarters weekly so that the National Juvenile Coordinator can maintain an up-to-date record of all juveniles in INS custody.

2.3.6 For all juveniles in INS custody, the District Juvenile Coordinator must make weekly visits to the facilities where juveniles are housed. During these visits, the District Juvenile Coordinator should assess the juveniles' welfare through meetings with staff and juveniles, and should ensure that their needs are being met. In meeting with juveniles, the District Juvenile Coordinator should update juveniles on their cases, facilitate attorney visits, ensure access to attorneys, and continue efforts to pursue, identify, and document potential suitable sponsors (See Section 2.4, "Release"). The District Juvenile Coordinator may also need to reassess placement and arrange for transportation to another facility, if needed.

2.3.7 There are three scenarios regarding juvenile transfer: (1) from facility to facility within the district; (2) from one district to another within a region; or (3) from region to region. These transfers involve specific tasks and notifications of specific individuals (see Section 6, Transportation Requirements, for details). Because bed space is at a premium, special care must be taken in coordinating juvenile transfers. If conflicts or problems arise in securing bed space or in placing juveniles for any reason, to include special needs, contact the National Juvenile Coordinator to help resolve the problem (see Section 4.4, "Emergency Placement or Transfer of Juveniles"). In general, the following rules apply for the three transfer scenarios:

- (1) A juvenile cannot be transferred from one facility to another within a district without the approval of the Local or District Juvenile Coordinator.
- (2) When juveniles are transferred from one district to another district within a region, the local District Juvenile Coordinator contacts the Regional Juvenile Coordinator, who arranges and approves the transfer.
- (3) When transferring juveniles from region to region, the District Juvenile Coordinator will contact the Regional Juvenile Coordinator to coordinate and approve the transfer. In this case, the sending region's Regional Juvenile Coordinator must be in contact with the receiving region's Regional Juvenile Coordinator before and during the transfer.

## **2.4 Release**

The INS will release a juvenile from its custody without unnecessary delay unless detention is required to secure timely appearance in court or to ensure the juvenile's safety or that of others.<sup>6</sup> Family reunification efforts must continue while a juvenile is in INS legal custody and must be documented by the District Juvenile Coordinator.

2.4.1 The District Director has full discretion regarding the custody and release of juveniles, except in the case of special populations (see Section 3), and may redetermine terms and conditions of bond, orders of recognizance and supervision, and conditions of parole. At the District Director's discretion, juveniles shall be released from custody to a qualified sponsor in the following order of preference:



1. a parent;
2. a legal guardian;
3. an adult relative (brother, sister, aunt, uncle, or grandparent);Note: The District Director may choose to set bond when circumstances suggest that doing so would help to ensure the juvenile's appearance in court.
4. an adult relative or entity designated by the parent or legal guardian as capable and willing to ensure the juvenile's well-being in:
  - a. a declaration signed under penalty of perjury before an Immigration or Consular Officer, or
  - b. such other documentation that establishes (to the satisfaction of the INS in its discretion) that the individual designating the juvenile's custodian is, in fact, his or her parent or guardian.
5. a state-licensed juvenile shelter, group home, or foster home willing to accept legal custody, as opposed to simply physical custody (which means that the INS will not pay for the juvenile's upkeep); or
6. an adult individual or entity seeking custody (in the discretion of INS) when it appears there is no other likely alternative to long-term detention, and family reunification does not appear to be a reasonable possibility.<sup>7</sup>

2.4.2 Prior to releasing a juvenile from INS custody to one of the entities named above, the Officer must have the juvenile's sponsor execute an Affidavit of Support (Form I-134) and supplemental questionnaire, which specifies parameters for applicant's seeking custody of the juvenile.

2.4.3 The District Director shall promptly respond to all written custodian requests to transfer physical custody.

2.4.4 INS may terminate custody arrangements and assume legal custody of a juvenile if the custodian fails to comply with the agreement. INS will not terminate for minor violations of the custodian's obligation to notify INS of any changes in address within 5 days following a move.

2.4.5 As merited by specific cases and allowed by district policy, an INS Officer may deem it necessary to require a positive suitability assessment of a prospective custodian prior to releasing a juvenile to an individual or program. Such an assessment may include:

- investigation of the living conditions;
- standard of care to be provided;
- verification of identity and employment of individual offering support;
- interviews with members of the household;
- a home visit; and
- consideration of the juvenile's concerns.

### **3. Special Issues and Special Populations**

3.1 Processing of Chinese and Indian Juvenilese This section is from a 12/4/95 memo to Regional and District Directors from the Office of Deputy Commissioner on "Instructions for the Detention, Placement, and Release of Chinese Juveniles."e

3.1.1 No unaccompanied Chinese or Indian juvenile will be released without the successful completion of a home assessment, approval by the National Juvenile Coordinator, and concurrence from the district.

3.1.2 During initial processing of the juvenile (see Section 2.1), the Arresting Officer should obtain as much detailed biographical information as possible, given the heightened involvement of smugglers with Chinese and Indian juveniles.

3.1.3 The District Juvenile Coordinator is responsible for ensuring that information is gathered (e.g., through interviews conducted by appropriate facility staff or the District Juvenile Coordinator), that this activity is documented in the A-file, and that information on potential sponsors is forwarded to the International Affairs Office, Humanitarian Affairs Branch (IAO/HAB) (see Attachment 3a, "Referral For Home Assessment" form). The "Referral for Home Assessment" form may be completed by facility staff or the District Juvenile Coordinator. In either case, as stated above, this activity must be documented in the juvenile's A-file.

3.1.4 On receiving the home assessment form, IAO/HAB contacts the appropriate voluntary agency (VOLAG). The VOLAG will then contact the juvenile and the potential sponsor. The purpose of these contacts is to help ascertain the relationship between the juvenile and the potential sponsor, as well as to work with the juvenile in identifying a relative if s/he has been unable or unwilling to do so.

3.1.5 IAO/HAB forwards the information identified in 3.1.3 above to the National Juvenile Coordinator, who will perform a preliminary record check (DACS and CIS) on the potential sponsor.

3.1.6 If the check is successful, the National Juvenile Coordinator notifies IAO/HAB, who in turn contacts the appropriate voluntary agency to conduct a formal home assessment.

3.1.7 Once the VOLAG performs the home assessment, it is sent back to IAO/HAB, which then sends it to the National Juvenile Coordinator for review and final approval. If approved, the National Juvenile Coordinator notifies IAO/HAB, which in turn notifies the appropriate VOLAG. The National Juvenile Coordinator then notifies the appropriate Regional and District Juvenile Coordinator(s). The District Juvenile Coordinator then conducts a full records check (DACS, CIS, NCIC, and other appropriate computerized checks as available) and files check on the potential sponsor. If all is in order, the reunification process may continue (see Section 2.4, "Release"). It is imperative that the sending and receiving District Juvenile Coordinators work together to ensure that the juvenile is reunited with the appropriate family member(s). The Regional Juvenile Coordinator(s) is responsible for ensuring the successful and timely completion of these final reunification steps.

3.1.8 Following reunification, the Docket Officer assigned-where the juvenile now resides-schedules, conducts, and documents monthly interviews with Chinese and Indian juveniles to assure their well-being and to verify their place of residence and their enrollment and actual attendance at school. During the interview, the Interviewing Officer should also determine whether juveniles or their family members have

been contacted, threatened, or intimidated by organized crime groups. If the juvenile fails to appear for the interview, the Interviewing Officer must contact the Regional Juvenile Coordinator. Once they turn 18, juvenile aliens are no longer scheduled for routine monthly call-ins to local INS offices and are treated as adults.<sup>f</sup> From 12/8/97 memo, "Review of Cases of Chinese Juveniles Upon Reaching the Age of 18."<sup>f</sup>

### **3.2 Detention and Placement of Chinese and Indian Juveniles**

3.2.1 Before placing any Chinese or Indian juvenile claiming to be ages 15, 16, or 17 in a juvenile facility, the Arresting Officer, with help from the Local or District Juvenile Coordinator as needed, will arrange for the juvenile to have a forensic dental examination. Individuals claiming to be 14 years old or younger, whom the Processing Officer believes look their age, may be assumed to be juveniles. Further medical examinations may be done in cases of doubt. The juvenile may be placed once the medical exam confirms that s/he is, indeed, a juvenile. If forensic testing cannot be completed within several hours after apprehension, but a reasonable person would conclude the individual to be a juvenile, then s/he may be placed in a juvenile facility. In this case, a forensic examination must be completed within 72 hours of apprehension. If the forensic tests show the individual to be an adult, s/he will be treated as such for all purposes, including detention.

3.2.2 District Juvenile Coordinators will consult with their Regional Juvenile Coordinators as to which facilities accept Chinese or Indian juveniles and have available space. An INS Officer must escort the juvenile if s/he is transferred by commercial airline (see Section 6). The District Juvenile Coordinator must keep in close contact with each facility's director and caseworkers. The District Juvenile Coordinator shall physically visit the facility no less than once weekly. The Regional Juvenile Coordinator and the National Juvenile Coordinator must be notified of any problems or questions that arise at any of the facilities.

3.2.3 When a Chinese or Indian juvenile receives a final order of removal, the District Juvenile Coordinator reviews the case at the district level. Unless the juvenile has been granted relief, the juvenile should be considered for placement in a secure juvenile detention facility. This decision should be made on a case-by-case basis and reviewed monthly until the juvenile is physically removed from the United States.

3.2.4 Any juvenile apprehended following escape from a foster home, shelter care facility, or any other INS custody arrangement will be placed in a secure juvenile detention facility (see Section 8, Escapes and Other Emergency Incidents).

### **3.3 Chinese and Indian Juveniles in Foster Homes.**

This section was drawn from the following memo: a 12/8/97 memo, "Review of Cases of Chinese Juveniles Upon Reaching the Age of 18." This memo updates and expands upon the memos of 9/28/94 ("Chinese Juveniles Reaching Majority While in Foster Care") and 12/4/95 ("Instructions for the Detention, Placement, and Release of Chinese Juveniles." A memo dated 11/1/95, "Chinese Juveniles in Foster Homes," was also used as an information source, along with a 12/15/95 memo, "Project Locate Update" to Regional Directors, Eastern, Central, Western.<sup>g</sup>

3.3.1 New Chinese and Indian juvenile arrivals will not be placed in foster homes unless they are under 10 years of age. The District Juvenile Coordinator will make that determination on a case-by-case basis.

3.3.2 For Chinese and Indian juveniles presently in foster homes, the District Juvenile Coordinator must

keep in close contact with the caseworker and visit the foster care home weekly. Contact with the caseworker on each case should occur no less than every other week. The District Juvenile Coordinator should discuss the current status of the juvenile's INS case and also elicit the caseworker's opinion of the juvenile's stability in the foster home.

3.3.3 The District Juvenile Coordinator will arrange to interview each Chinese and Indian juvenile placed in foster homes in that district (before they turn 18 years old) to assess their likelihood of fleeing the foster home. Each Chinese and Indian juvenile should be called into the district office through the caseworker of the local volunteer agency (VOLAG). (The caseworker's opinion will be made part of the assessment.) This review will also help determine which juveniles are ready to be removed from the United States, where they are in the legal process leading to removal, and help to remedy any delays that have occurred. During the interview, the District Juvenile Coordinator should determine-

- the juvenile alien's DACS case category;
- the juvenile's current status in school, any possible sponsors, and any concerns the juvenile may have;
- any biographical information that could be used to apply for a travel document (special care should be taken not to alarm the juvenile and possibly provoke an escape);
- the juvenile's current status of hearings before EOIR, appeals before the Board of Immigration Appeals (BIA), applications for Special Immigrant Status, and dependency petitions; and
- whether the juvenile's file contains a travel document or an application for one.

3.3.4 After these files are reviewed, District Juvenile Coordinators must inform District Directors of those juveniles in their districts who may be escape risks. All information is to be reported back to the Office of Field Operations, with a copy sent to the Regional Juvenile Coordinator and the National Juvenile Coordinator at Headquarters Office of Field Operations (HQOPS).

3.3.5 Each district must have a 24-hour point of contact, so that immediate notification of a Chinese and Indian juvenile's disappearance from a foster care program can be made to the local INS Office by the foster care family and/or VOLAG that becomes aware of a juvenile's disappearance. The contact person's name and 24-hour telephone numbers must be forwarded to and kept by HQ Field Operations.

3.3.6 In the event of a Chinese or Indian juvenile's disappearance, the local INS Office should handle the matter as a reportable "incident," and the concerned Supervisor should contact the Regional Office. The Region should immediately notify the HQ Command Center. The Command Center will contact HQOPS. INS Headquarters will then notify the Department of Justice.

3.3.7 All districts investigating a disappearance within their jurisdictions should maintain the permanent A-file and forward a work folder-to include a fingerprint chart and photo-to the Senior Special Agent at HQ Field Operations. Districts should also advise HQ Field Operations through the appropriate regional office when leads suggest that a juvenile has left its jurisdiction.

3.3.8 Field Offices must prepare and forward the weekly G-166 reports to HQOPS through the Regional

Office so that current information will be available when needed. The G-166 report should include all investigative initiatives, interviews with relatives and friends, listing of any telephone numbers, and any contacts made with local law enforcement. It is important that all field offices devote the needed resources to investigate and follow up on all leads in a timely manner.

3.3.9 As with Chinese and Indian juveniles in foster care, the cases of those still being held in INS juvenile shelter care or secure juvenile detention facilities should be reviewed prior to the juveniles' turning 18. The same criteria outlined in this section for aliens in foster care shall be applied. A delivery bond or parole pursuant to 8 C.F.R. § 212.5(a) may be appropriate. Should the case review determine the subject is a poor risk for release—as evidenced by prior escapes, failure to appear, or lack of equities—the individual should be considered for transfer to an adult detention facility immediately upon reaching the age of 18.

### **3.4 Chinese and Indian Juveniles Turning 18 While in Foster Care**

3.4.1 Unless a case review of a Chinese or Indian national currently in foster home custody shows a final order and the immediate likelihood of obtaining a travel document without any legal impediment to removal, the District Juvenile Coordinator will consider setting a bond for the alien's delivery, or other conditions of release.<sup>h</sup> From 12/8/97 memo (see endnote j above).<sup>h</sup> Case reviews should involve the following:<sup>i</sup> From 9/28/94 memo (see endnote j above).<sup>i</sup>

- The District Juvenile Coordinator or Local Deportation Officer should check with EOIR, District Counsel, Examinations, and Asylum Officers to determine whether any outstanding applications for relief are pending, or motions to reopen exist. Once assured there are none, they may proceed to transfer or place the subject in a "hard custody" facility.
- If a former juvenile has applied for some form of relief, to be available within 30 days or less, s/he will remain in foster care.
- If a former juvenile has an application or appeal pending, which is not likely to be adjudicated in 30 days or less, he or she can be transferred to adult detention. However, the branch, office, or venue adjudicating the case must be notified of change of custody location.
- If a former juvenile meets the above criteria and the Chinese or Indian Consular General has indicated that a travel document will be issued in under 30 days, the subject may be held in a local adult detention facility or nearby Service Processing Center (SPC).
- The case review by the District Juvenile Coordinator should include efforts to discover the detention location of other aliens apprehended at the same time. Barring safety or security issues, these subjects should be reunited with the group with whom they were apprehended. Placing the former juveniles with their original group will facilitate their return when obtaining travel documents.

3.4.2 In determining whether to release a Chinese or Indian national who has reached the age of 18 in foster care, the District Juvenile Coordinator should consider the following factors:<sup>j</sup> From 12/8/97 memo (see endnote j above).<sup>j</sup>

- A former juvenile who has remained in foster care without having escaped is more likely to appear for removal.

- A former juvenile who has escaped or who appears to have cooperated with alien smugglers should be considered less likely to appear for removal and may require greater guarantees of appearance (higher bond).
- An individual reapprehended after engaging in unauthorized employment should be considered a poorer risk, for whom the INS may consider a higher bond as well as other conditions to ensure appearance for removal.

3.4.3 If release is appropriate, a bond may be posted by a relative, the current foster care provider, a nongovernmental organization (NGO), or by the alien. For aliens in proceedings under Section 212 of the Act, parole pursuant to 8 C.F.R. § 212.5(a) may be appropriate.

3.4.4 When a review is completed and a decision made to release the alien, the respective Regional Juvenile Coordinator is notified prior to release. The Regional Juvenile Coordinator then notifies the National Juvenile Coordinator, who, in turn, notifies IAO/HAB of the planned release. This notification is mandatory and will permit the termination of foster care services provided by NGOs.

3.4.5 In cases where the decision is made to transfer the alien to adult detention, the former juvenile should be detained, if at all possible, where other Chinese and Indian nationals are held and with those who speak the same dialect. Efforts should also be made to find out if the former juvenile was apprehended with other detained subjects and, if so, to place him or her in the same facility.

#### **4. Nonsecure and Secure Juvenile Facilities**

This section discusses the two types of juvenile facilities and the circumstances under which they are used: (1) nonsecure juvenile facilities (e.g., shelter care, group homes, and foster care); and (2) secure juvenile facilities (e.g., secure and medium-secure facilities).

##### **4.1 Placement in Nonsecure Juvenile Facilities (Licensed Programs)**

4.1.1 Whenever a juvenile is taken into INS custody, the Arresting Officer should notify the District or Regional Juvenile Coordinator before transporting the juvenile to an appropriate facility. The District or Regional Juvenile Coordinator can help the Arresting Officer with questions about facility type or where to locate appropriate bed space. Definition of Licensed Program: Any program, agency, or organization licensed by an appropriate state agency to provide residential, group, shelter, and foster care for dependent children (to include group homes, foster homes, or facilities for juveniles with special needs).

4.1.2 When placing a juvenile in a facility, the Placing Official must strictly adhere to the guidelines contained in the Flores v. Reno decision (Attachment 1), which have been incorporated below, as relevant. Information in 4.1.1 and 4.1.2 from 10/31/97 memo, "Juvenile Bedspace," from Office of Field Operations.

4.1.3 A juvenile who remains in INS custody must be placed in an appropriate nonsecure juvenile facility (licensed program) within 3 days (72 hours from when INS assumes custody) if he or she was apprehended in an INS district with a licensed program that has space. In all cases, juveniles must be placed within 5 days, with certain exceptions-which require permission from the Regional or National Juvenile Coordinator (HQOPS) or designee. Permission requirement from 12-13-91 memo, "National Policy Regarding Detention

and Release of Unaccompanied Alien Minors." These exceptions are as follows:

The juvenile is an escape risk, criminal, or delinquent. Factors to consider include whether-

- the juvenile is currently under final order of removal;
- the juvenile's immigration history includes prior breach of bond, failure to appear before INS or Immigration Court, evidence of debt to organized smugglers for transportation, voluntary departure, or a previous removal from the United States pursuant to a Final Order of Removal; and NOTE: It is imperative that individuals who have turned 18 not be held in facilities that are licensed for juveniles. Doing so may result in a facility losing its license and the ultimate loss of much needed juvenile detention space.
- the juvenile has previously absconded or attempted to abscond from INS custody.
- The INS believes the alien claiming to be a juvenile is actually an adult.
- A court decree or court-approved settlement requires otherwise.
- An emergency influx of juvenile aliens into the United States prevents compliance in that nonsecure juvenile beds are unavailable. In this case, juveniles may be placed in secure or medium-secure juvenile detention facilities until appropriate bed space becomes available. At such time, juveniles are to be placed in nonsecure juvenile facilities (licensed programs) as soon as possible (see Section 5 for inspection standards for juvenile facilities).
- The juvenile is transported from a remote area or speaks a unique language that requires an interpreter. (The INS must place the juvenile in a licensed program within 5 business days.)

4.1.4 All Juvenile bed space is national bed space, accessible to all field offices independent of the district where the facility is located or that oversees the InterGovernmental Service Agreement (IGSA) or contract. Regional and District Juvenile Coordinators shall be afforded the opportunity to identify and inspect potential facilities. Many juvenile facilities are owned and operated by local or state juvenile justice authorities, or by county/state social service agencies. Juvenile bedspace requirements (4.1.4, 4.1.5, and 4.1.6) are taken from the 10/31/97 memo (see endnote o below).

4.1.5 The Regional and/or District Juvenile Coordinator must inspect all INS facilities prior to placing a juvenile and, subsequently, on an annual basis (see Section 5 for inspection standards for juvenile facilities). The Juvenile Coordinator must make weekly visits to any facility where INS juveniles are housed, to see the facility and to visit the juveniles housed there.

## **4.2 Placement in Medium-Secure and Secure Detention Facilities**

4.2.1 A juvenile may be placed in an INS contracted facility or state/county juvenile detention facility with separate accommodations for juveniles only if the District Director or Chief Patrol Agent or designee determines-

- The juvenile has been charged with or is chargeable for a delinquent act, is subject to delinquency proceedings, or has been adjudicated delinquent. Exceptions include the following:

- The juvenile's offense is isolated-not part of a pattern of criminal activity-and does not involve violence against a person or the use or carrying of a weapon (e.g., breaking and entering, vandalism, driving under the influence, etc.).
- The juvenile's offense is a petty offense, such as shoplifting, joy riding, disturbing the peace, etc.
- The juvenile has committed or made threats to commit a violent or malicious act (toward self or others) while in INS custody in the presence of an INS Officer.
- While in a licensed program, the juvenile has engaged in conduct that program staff determine is unacceptable and disruptive to the normal functioning of that program; or removal is needed to ensure the welfare of other juveniles in the program. Examples of unacceptable conduct include fighting, substance abuse, intimidation of others, etc.
- The juvenile is an escape risk.
- The juvenile is at risk, or subject to compromising safety issues, e.g., smugglers.

4.2.2 In all the above such cases, the INS should attempt to place the juvenile in a medium-secure facility-i.e., one having 24-hour awake supervision and a secure perimeter but no cells-instead of a secure detention facility, if available and if the circumstances are appropriate.

4.2.3 The Regional Juvenile Coordinator must review and approve the decision to place the juvenile alien in a medium-secure or secure detention facility.

4.2.4 Juveniles placed in a medium-secure or secure detention facility must be provided written notice of the reasons why (see Attachment 3b, "Notice of Placement in Secure Juvenile Detention Facility").

### **4.3 Juveniles Turning 18 While in INS Custody**

4.3.1 The Local or District Juvenile Coordinator should ensure that the cases of all juveniles in INS custody are thoroughly reviewed prior to their turning 18 (see Section 3.4, "Chinese and Indian Juveniles Turning 18 While in Foster Care," for case review procedures). When a juvenile in INS custody turns 18, the District Director must decide whether to transfer the juvenile to an adult detention facility or release the juvenile on bond or recognizance (see Section 3.4 for the factors to consider when determining whether to release a juvenile who has turned 18).

4.3.2 If release is appropriate, bond may be posted by a relative, the current foster care provider, an NGO, or by the alien. For aliens in proceedings under Section 240 of the Act and chargeable under Section 212, parole pursuant to 8 C.F.R. § 212.5(a) may be appropriate.

4.3.3 When a review is completed and a decision made to release, the respective Regional Juvenile Coordinator is notified-prior to release. The Regional Juvenile Coordinator then notifies the National Juvenile Coordinator of the planned release.



4.3.4 If a decision is made to transfer the alien to adult detention, the former juvenile should be detained, if at all possible, with other detainees of the same nationality who speak the same dialect. Efforts should also be made to find out if the former juvenile was apprehended with other detained subjects and, if so, to place him or her in the same facility.

#### **4.4 Emergency Placement or Transfer of Juveniles**

4.4.1 All juveniles placed in a juvenile facility (to include foster homes) remain in the legal custody of INS and may only be released by INS. A juvenile may be transferred from one child care facility to another without securing permission from the INS district office only in an emergency. INS must be notified of such transfer within 8 hours. In such cases (where compelling circumstances necessitate transfer), juveniles should be transferred with all their possessions and legal papers. Juveniles represented by counsel in an INS proceeding may not be transferred without advance notice to such counsel except in an emergency, in which case counsel shall be notified as soon as possible; further, no juvenile may be denied access to legal services at the location where transferred. From 12/13/91 memo, "National Policy Regarding Detention and Release of Unaccompanied Alien Minors," from the Office of the Commissioner.

4.4.2 In the event nonsecure juvenile bed space is unavailable as a result of an "emergency" or "influx," INS may place juveniles in medium-secure or secure juvenile detention facilities, as stipulated in the Flores Agreement. In these cases, the District and Regional Juvenile Coordinator will make reasonable efforts to place these juveniles as quickly as possible in nonsecure juvenile facilities (licensed programs) when bed space becomes available. Emergency is an act or event, such as a natural disaster or medical emergency, that prevents the prompt placement of juveniles in nonsecure juvenile facilities (licensed programs).

Influx is defined as any situation in which there are more than 130 juveniles in INS custody who are eligible for placement in nonsecure juvenile facilities (licensed programs). This number includes those who have already been placed and those awaiting placement.

4.4.3 The National Juvenile Coordinator will establish and maintain an Emergency Placement List of at least 80 beds at programs licensed by an appropriate state agency. These are beds that are potentially available for emergency placements to supplement the 130 that INS typically has available. Whenever possible, these placements will meet the standards applicable to those the INS normally uses. The Emergency Placement List will include the facility name, the number of potentially available beds, contact name and number (nights, holidays, and weekends), any restrictions on juveniles (i.e., age), and any special services available.

4.4.4 The National Juvenile Coordinator will maintain a list of juveniles affected by the emergency or influx, including (1) the juvenile's name, (2) date and country of birth, (3) date placed in INS custody, and (4) place and date of current placement.

4.4.5 Within one business day of the emergency or influx, the National Juvenile Coordinator or designee will contact the programs on the Emergency Placement List to determine available placements. As soon as available placements are identified, the National Juvenile Coordinator will advise appropriate INS staff of their availability. To the extent practical, the INS will attempt to locate emergency placements where culturally and linguistically appropriate community services are available.

4.4.6 In the event the number of juveniles needing emergency placement exceeds the space available on

the list, the National Juvenile Coordinator will try to find additional placements through licensed programs, county social services departments, and foster family agencies.

4.4.7 Each year the INS will reevaluate the number of regular placements (placements in licensed programs) needed for detained juveniles to see if it should be adjusted. However, any decision to increase the number of placements available is subject to the availability of INS resources.

## **5. Inspection Standards for Juvenile Shelter Care and Secure Juvenile Detention Facilities**

This section enumerates the various standards for the types of facilities named in the preceding section, specifically, juvenile shelter care and secure juvenile detention facilities. These standards are drawn from the American Correctional Association (ACA) standards and the licensed program requirements contained in the Flores Agreement. This section is formatted to serve as a "pull-out" for posting or frequent reference. The pull-out includes two summary checklists listing the standards in abbreviated form for both juvenile shelter care and secure juvenile detention facilities.

### **Special Instructions for Supplemental Form G-324a Service Contract Facility Inspection Checklist for INS Secure Juvenile Detention Facilities**

This packet contains Form G-324a, the "Service Contract Facility Inspection Report," which includes instructions for completing the report, a checklist for inspecting adult facilities, an inspection certification page, and Supplemental Form G-324a (2/98).

When conducting inspections of juvenile facilities, please replace page 2 of Form G-324a—the checklist used for inspecting adult facilities—with Supplemental Form G-324a. These attached pages comprise the itemized checklist to be used for evaluating juvenile detention facilities.

## **Minimum Standards for Immigration and Naturalization Service Secure Juvenile Detention Facilities 1**

# Part I. Administration and Management

## Section C: Personnel

**Principle:** A written body of policy and procedures establishes the facility's staffing, recruiting, promotion, and review procedures for employees.

### Criminal Record Check

#### 3-JDF-1C-13 (Ref. 2-8062)

- 1. A criminal record check is conducted on all new employees in accordance with state and federal statutes.**

*Comment:* The facility's administrators should know of any criminal conviction that could directly affect an employee's job performance in a facility setting.

## Section E: Juvenile Records

**Principle:** A written body of policy and procedures establishes the facility's management of case records, including at a minimum the following areas: the establishment, use, and content of juvenile records; right to privacy; secure placement and preservation of records; and schedule for retiring or destroying inactive records.

#### 3-JDF-1E-01 (Ref. 2-8110)

- 2. Written policy, procedure, and practice govern case record management, including at a minimum the following areas: the establishment, use, and content of juvenile records; right to privacy; secure placement and preservation of records; and schedule for retiring or destroying inactive records. The policies and procedures are reviewed annually.**

*Comment:* An orderly and timely system for recording, maintaining, and using data about juveniles increases the efficiency and effectiveness of program and service delivery and the transfer of information to the courts and release authorities.

#### 3-JDF-1E-02 (Ref. 2-8111, 2-8113, 2-8115)

- 3. The facility administration maintains a record on each juvenile that is available in a master file and includes at a minimum the following information:**

- name, age, sex, place of birth, and race or nationality;
- initial intake information form;
- authority to accept juvenile;
- referral source;
- case history/social history;
- medical consent form;
- name, relationship, address, and phone number of parent(s)/guardian(s) and person(s) juvenile resides with at time of admission;
- driver's license, social security, and Medicaid numbers, when applicable;

- court and disposition;
- individual plan or program;
- signed release-of-information forms, when required;
- progress reports on program involvement;
- program rules and disciplinary policy signed by juvenile;
- grievance and disciplinary record, if applicable;
- referrals to other agencies; and
- final discharge or transfer report.

*Comment:* Medical and educational records are components of the master file and may be located in other appropriate areas of the facility. The juvenile's file should contain all legal documents and correspondence relating to the juvenile and all progress and other reports made during the length of stay. All data in the field should be verified, and confidentiality should be maintained.

### Transfer of Records

#### 3-JDF-1E-04 (Ref. New)

4. **Written policy, procedure, and practice provide that an updated case file for any juvenile transferred from one facility to another is transferred simultaneously or, at the latest, within 72 hours.**

*Comment:* Continuity of programming for juveniles transferred from other facilities requires that staff have the benefit of a complete cumulative case record as soon as possible. The same policy and procedure should apply to the transfer of medical files.

#### 3-JDF-1E-08 (Ref. 2-8119)

5. **Written policy, procedure, and practice provide that records are safeguarded from unauthorized and improper disclosure.** Manual records are marked "Confidential." Written policy and procedure provide that when any part of the information system is computerized, security ensures confidentiality.

*Comment:* A juvenile's constitutional right to privacy can be violated if records are improperly disseminated. The institution should establish procedures to limit access to records to persons and public agencies with both a "need to know" and a "right to know" and that can demonstrate that access to such information is necessary for juvenile justice purposes. Written guidelines should regulate juvenile access to records.

## Part II. Physical Plant

### Section A: Building and Safety Codes

**Principle:** Compliance with professional building and fire safety codes helps to ensure the safety of all persons in the facility.

#### Fire Codes

#### 3-JDF-2A-03 (Ref. New)

##### Mandatory

6. **The facility conforms to applicable federal, state, and/or local fire safety codes. Compliance is documented by the authority having jurisdiction.** A fire alarm and automatic detection system are required, as approved by the authority having jurisdiction, or there is a plan for addressing these or

other deficiencies within a reasonable time period. The authority approves any variances, exceptions, or equivalencies that do not constitute a serious life safety threat to the facility's occupants.

*Comment:* The applicable fire safety code(s) must be comprehensive, ensure basic protection of life, and include the use of fire detection and alarm systems in all habitable areas of the facility. The applicable codes should be applied to all areas of the facility. Reports of periodic inspections and any actions taken with respect to those inspections must be available.

**3-JDF-2A-04** (Ref. 2-8159)  
**Mandatory**

**7. There is documentation by a qualified source that the interior finishing materials in juvenile living areas, exit areas, and places of public assembly are in accordance with recognized codes.**

*Comment:* No facility furnishings, ceilings, partitions, or floors should be constructed of foamed plastics or foamed rubber unless the fire performance characteristics of the material are known and acceptable.

## Section C: Juvenile Housing

**Principle:** Juvenile housing areas are the foundation of facility living and must promote the safety and well-being of both juveniles and staff.

**3-JDF-2C-02** (Ref. 2-8138)

**8. Rooms or sleeping areas in which juveniles are confined conform with the following requirements:**

NUMBER OF OCCUPANTS AMOUNT OF UNENCUMBERED SPACE

- 1 35 square feet
- 2–50 35 square feet per occupant\*

“Unencumbered space” is usable space that is not encumbered by furnishings or fixtures. At least one dimension of the unencumbered space is no less than 7 feet. All fixtures must be in operational position.

*Comment:* The standard encourages design flexibility and creativity by relating room size to the amount of unencumbered, or free, space provided by the design. Unencumbered space is determined by multiplying the length and width of the room and subtracting from this figure the total number of square feet not occupied by bed(s), plumbing fixtures, desk(s), locker(s), and other fixed equipment. Measurements should be made with equipment and furnishings in their normal use positions (i.e., to discourage Murphy beds).

### Dayrooms

**3-JDF-2C-04** (Ref. 2-8140, 2-8169)

**9. Dayrooms with space for varied juvenile activities are situated immediately adjacent to the**

**juvenile sleeping areas, but are separated from them by a floor-to-ceiling wall.** Dayrooms provide a minimum of 35 square feet of space per juvenile (exclusive of lavatories, showers, and toilets) for the maximum number of juveniles who use the dayroom at one time.

*Comment:* While the standard establishes a minimum square footage for any dayroom, total square footage is calculated for the maximum number of users at one time, rather than the total number of juveniles served.

## Toilets

### 3-JDF-2C-06 (Ref. 2-8133)

**10. Toilets are provided at a minimum ratio of 1 for every 12 juveniles in male facilities and 1 for every 8 juveniles in female facilities.** Urinals may be substituted for up to one-half of the toilets in male facilities. All housing units with five or more juveniles have a minimum of two toilets.

*Comment:* The standard ensures the availability of toilets and requires a measure of privacy and control for users. At the same time, the standard provides flexibility for designers and managers.

## Wash Basins

### 3-JDF-2C-07 (Ref. 2-8133)

**11. Juveniles have access to operable wash basins with hot and cold running water in the housing units at a minimum ratio of 1 basin for every 12 occupants.**

*Comment:* Provision must be made for juvenile access to wash basins in sleeping areas, dayrooms, and other parts of the facility.

## Showers

### 3-JDF-2C-08 (Ref. 2-8136)

**12. Juveniles have access to operable showers with temperature-controlled hot and cold running water, at a minimum ratio of one shower for every eight juveniles, unless national building or health codes specify a different ratio.** Water for showers is thermostatically controlled to temperatures ranging from 100 degrees Fahrenheit to 120 degrees Fahrenheit to ensure the safety of juveniles and to promote hygienic practices.

*Comment:* Offenders can use scalding showers as a weapon against, or punishment for, other juveniles. Also, accidental injury could occur when cold water is drawn in other areas, thereby unexpectedly elevating the hot water in showers to scalding temperatures. Water temperatures below 100 degrees Fahrenheit are uncomfortable and may deter an individual from pursuing good hygienic practices. The temperature controls should not preclude the use of water at higher temperatures if needed in other areas of the facility, such as kitchens.

## Special Management Housing

### 3-JDF-2C-12 (Ref. 2-8141)

**13. Male and female juveniles do not occupy the same sleeping room.**

*Comment:* Juveniles should be segregated by sex in sleeping rooms, although they may be housed in the same living unit.

## **Section D: Environmental Conditions**

**Principle:** Environmental conditions significantly influence the overall effectiveness of facility operations. Standards for lighting, air quality, temperature, and noise levels are designed to preserve the health and well-being of juveniles and staff members and to promote facility order and security.

### **Housing Areas**

**3-JDF-2D-01** (Ref. 2-8133)

**14. Written policy, procedure, and practice require that all housing areas provide at a minimum the following:**

- lighting of at least 20 foot candles at desk level and in the personal grooming area;
- natural light available from an opening or window that has a view to the outside, or from a source within 20 feet of the room;
- other lighting requirements for the facility determined by tasks to be performed;
  - access to drinking fountain; and
  - heating, ventilation, and acoustical systems to ensure healthful and comfortable

living and working conditions for juveniles and staff.

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*Comment:* None.

### **Heating and Cooling**

**3-JDF-2D-03** (Ref. New)

**15. Temperatures in indoor living and work areas are appropriate to the summer and winter comfort zones.**

*Comment:* Temperature and humidity should be capable of being mechanically raised or lowered to an acceptable comfort level. The comfort zones are 66 to 80 degrees Fahrenheit in summer, 61 to 73 degrees Fahrenheit in winter, with an optimal constant temperature of 70 degrees Fahrenheit.

## **Section E: Program and Service Areas**

**Principle:** Adequate space must be provided for the various program and service functions conducted in the facility. Spatial requirements are best determined by careful assessment of how, when, and by how many juveniles such spaces are used.

## Classrooms

**3-JDF-2E-05** (Ref. 2-8146)

**16. School classrooms are designed to conform to local or state educational requirements.**

*Comment:* None.

## Food Service

**3-JDF-2E-07** (Ref. 2-8145)

**17. The food preparation area includes a space for food preparation based on population size, type of food preparation, and methods of meal service.**

*Comment:* None.

**3-JDF-2E-08** (Ref. 2-8228)

**18. There are provisions for adequate storage and loading areas and garbage disposal facilities.**

*Comment:* In order to ensure efficient food service and adherence to health and safety regulations, it is essential that the kitchen be located near the space it requires to accomplish its mission. The amount of space needed for the kitchen is affected by such variables as type of food service, location of dining area, number of persons to be served, complexity of the menu, equipment placement, storage of mobile equipment, and traffic sites.

## Clothing and Supplies

**3-JDF-2E-11** (Ref. 2-8155)

**19. Space is provided in the facility to store and issue clothing, bedding, cleaning supplies, and other items required for daily operations.**

*Comment:* None.

## Personal Property

**3-JDF-2E-12** (Ref. 2-8154)

**20. Space is provided for storing the personal property of juveniles safely and securely.**

*Comment:* None.

## Section G: Security

**Principle:** The physical plant supports the orderly and secure functioning of the facility.



## Control Center

(b)(2)High

## Perimeter Security

(b)(2)High

# Part III. Institutional Operations

## Section A: Security and Control

**Principle:** The facility uses a combination of supervision, inspection, accountability, and clearly defined policies and procedures on the use of security to promote safe and orderly operations.

## Security Manual

(b)(2)High

**3-JDF-3A-02 (Ref. New)**

(b)(2)High

**3-JDF-3A-03** (Ref. 2-8118)

**25. The facility maintains a daily report on juvenile population movement.**

*Comment:* The daily report should indicate the number of juveniles in the facility and their names, identifying numbers, and housing assignments. Official daily movement sheets should detail the number and types of admissions and releases each day and the count at the close of the day.

**Juvenile Careworkers**

**3-JDF-3A-07** (Ref. 2-8186)

**26. Written policy, procedure, and practice require that when both males and females are housed in the facility, at least one male and one female staff member are on duty at all times.**

*Comment:* None.

Permanent Log

**3-JDF-3A-09** (Ref. 2-8190)

**27. Written policy, procedure, and practice require that correctional staff maintain a permanent log and prepare shift reports that record routine information, emergency situations, and unusual incidents.**

*Comment:* Adequate supervision of juveniles requires a formal written reporting system. Each juvenile careworker in each housing unit on each shift should maintain detailed records of pertinent information regarding juveniles and groups of juveniles.

**Patrols and Inspections**

(b)(2)High

**Juvenile Counts**

**3-JDF-3A-13** (Ref. 2-8189)

**29. The facility has a system for physically counting juveniles.** The system includes strict accountability for juveniles assigned to work and educational release, furloughs, and other approved temporary absences.

*Comment:* There should be at least one juvenile count per shift. Counts should be scheduled so that they do not conflict with activity programs and normal operating procedures. The staff member responsible for maintaining the master count record should have up-to-the-minute information regarding all juvenile housing moves, work assignment changes, hospital admissions, etc. Adequate checks should be instituted to allow for human error. All juveniles in legal custody should be accounted for in the master count; all temporary absences from the facility should be explained in writing.

### **Use of Restraints**

**3-JDF-3A-16** (Ref. 2-8211)

**30. Written policy, procedure, and practice provide that instruments of restraint, such as handcuffs, leg irons, and straight jackets, are never applied as punishment and are applied only with the approval of the facility administrator or designee.**

*Comment:* Instruments of restraint should only be used as a precaution against escape during transfer; for medical reasons by direction of the medical officer; and to prevent juvenile self-injury, injury to others, or property damage; and should not be applied for more time than is absolutely necessary.

**3-JDF-3A-17** (Ref. 2-8210)

**31. Written policy, procedure, and practice provide that the facility maintains a written record of routine and emergency distribution of restraint equipment.**

*Comment:* A written record detailing who receives restraint equipment and the nature of the equipment they receive is necessary to establish responsibility and accountability for use.

**3-JDF-3A-18** (Ref. 2-8198)

**32. All special incidents—including but not limited to the taking of hostages and use of restraint equipment or physical force—are reported in writing, dated, and signed by the staff person reporting the incident.** The report is placed in the juvenile's case record and reviewed by the facility administrator and/or the parent agency.

*Comment:* A written record of such incidents should be available for administrative review. These reports also can be used in assessing training needs, counseling with staff about the proper handling of serious behavior incidents, and providing information for the parent agency or insurance company. The report should include the actions taken by the person in charge at the time of the incident.

### **Control of Contraband**

**3-JDF-3A-19** (Ref. 2-8196)

**33. Written policy, procedure, and practice provide for searches of facilities and juveniles to control contraband and to provide for its disposition.**

These policies and procedures are made available to staff and juveniles and are reviewed at least annually and updated if necessary.

*Comment:* The facility's search plans and procedures may include the following:

- unannounced and irregularly timed searches of rooms, juveniles, and juvenile work areas;
- inspection of all vehicular traffic and supplies coming into the facility;
- use of metal detectors at gates and entrances into housing units;
- complete search and inspection of each room prior to occupancy by a new juvenile;
- avoidance of unnecessary force, embarrassment, or indignity to the juvenile;
- staff training in effective search techniques that protect both juveniles and staff from bodily harm;
- use of nonintensive sensors and other techniques instead of body searches whenever feasible;
- conduct of searches only as necessary to control contraband or to recover missing or stolen property;
- respect of juveniles' rights to authorized personal property; and
- use of only those mechanical devices absolutely necessary for security purposes.

**3-JDF-3A-20 (Ref. 2-8213)**

**34. Written policy, procedure, and practice provide that manual or instrument inspection of body cavities is conducted only when there is reason to do so and when authorized by the facility administrator or designee.** The inspection is conducted in private by health care personnel.

*Comment:* None.

**3-JDF-3A-21 (Ref. New)**

**35. Written policy, procedure, and practice provide that visual inspection of juvenile body cavities is conducted based on a reasonable belief that the juvenile is carrying contraband or other prohibited material.** The inspection is conducted by a trained staff member of the same sex as the juvenile.

*Comment:* None.

**3-JDF-3A-22 (Ref. 2-8200)**

**36. Written policy, procedure, and practice govern the control and use of keys.**

*Comment:* The key control system should provide a current accounting of the location and possessor of each key. All keys should be issued from the central control area, and a log should be used to record the number of each key issued, the location of each lock, the number of keys to each lock, and the names of all employees possessing keys.

Keys should be stored so that their presence or absence can be easily determined and should be returned to the control center daily. All keys should be numbered, and the facility should maintain at least one duplicate key for each lock. Fire and emergency keys should be color-coded and marked for identification by touch. Juveniles should not possess keys other than those to living quarters or work assignments, when appropriate, and to personal lockers.

## Tools and Equipment

### 3-JDF-3A-23 (Ref. 2-8201)

**37. Written policy, procedure, and practice govern the control and use of tools and culinary and medical equipment.**

*Comment:* Tools and utensils that can cause death or serious injury (e.g., hacksaws, welding equipment, butcher knives, barber shears) should be locked in control panels and issued in accordance with a prescribed system. Provision should be made for checking tools and utensils in and out and for the control of their use at all times.

## Security Equipment

### 3-JDF-3A-26 (Ref. 2-8187)

**38. Written policy, procedure, and practice govern the availability, control, and use of chemical agents and related security devices and specify the level of authority required for their access and use.** Chemical agents are used only with the authorization of the facility administrator or designee.

*Comment:* Based on an analysis of the physical plant and the size and profile of the juvenile population, designated staff should determine what chemical agents and other security devices the facility needs. Written policies and procedures should specify the level of authority required for access to and use of security devices.

### 3-JDF-3A-27 (Ref. 2-8212)

**39. Written policy, procedure, and practice require that personnel who use force to control juveniles submit written reports to the facility administrator or designee no later than the conclusion of the tour of duty.**

*Comment:* All instances involving the use of force should be documented to establish the identity of the personnel and juveniles involved and to describe the nature of the incident.

### 3-JDF-3A-28 (Ref. 2-8204)

**40. Written policy, procedure, and practice provide that persons injured in an incident receive immediate medical examination and treatment.**

*Comment:* Immediate medical examination and treatment should be required in all instances involving the use of force or a chemical agent.

### 3-JDF-3A-29 (Ref. 2-8199)

#### **41. Firearms are not permitted in the facility except in emergency situations.**

*Comment:* No person, including law enforcement personnel, should be in possession of a firearm within the confines of a facility. A system of receipts for the temporary safe storage or checking of such equipment is required.

### Use of Force

### 3-JDF-3A-30 (Ref. 2-8212)

#### **42. Written policy, procedure, and practice restrict the use of physical force to instances of justifiable self defense, protection of others, protection of property, and prevention of escapes, and then only as a last resort and in accordance with appropriate statutory authority.** In no event is physical force justifiable as punishment. A written report is prepared following all uses of force and is submitted to administrative staff for review.

*Comment:* "As a last resort" may be defined through statutory authority.

## Section B: Safety and Emergency Procedures

**Principle:** The facility adheres to all applicable safety and fire codes and has in place the equipment and procedures required in the event of a major emergency.

### Fire Safety

### 3-JDF-3B-01 (Ref. 2-8170,8173)

#### **Mandatory**

#### **43. Written policy, procedure, and practice specify the facility's fire prevention regulations and practices.** These include but are not limited to the following:

- provision for an adequate fire protection service;
- a system of fire inspection and equipment testing at least quarterly or at intervals approved by the authority having jurisdiction, following the procedures stated for variances, exceptions, or equivalencies;
- an annual inspection by local or state officials or other qualified person(s); and
- availability of fire protection equipment at appropriate locations throughout the facility.

*Comment:* Facility administrators should plan and execute all reasonable procedures for the prevention and prompt control of fire. The use of national codes, such as the *Life Safety Code*, can help to ensure the safety of staff, juveniles, and visitors. The use of a volunteer or an internal fire department is acceptable for compliance, assuming that the fire station is readily accessible in case of fire and is the primary

alternative available. If the fire station is not continually staffed, fire alarm notification must be made to a local law enforcement unit or equally reliable source.

**3-JDF-3B-02** (Ref. 2-8172)

**Mandatory**

- 44. Written policy, procedure, and practice provide for a comprehensive and thorough monthly inspection of the facility by a qualified fire and safety officer for compliance with safety and fire prevention standards.** There is a weekly fire and safety inspection of the facility by a qualified departmental staff member. This policy and procedure is reviewed annually and updated as needed.

*Comment:* The “qualified departmental staff member” who conducts the weekly inspections may be a facility staff member who has received training in and is familiar with the safety and sanitation requirements of the jurisdiction. At a minimum, it is expected that the safety/sanitation specialist will provide on-the-job training regarding applicable regulations and inspections, including the use of checklists and the methods of documentation.

**3-JDF-3B-03** (Ref. 2-8175)

**Mandatory**

- 45. Specifications for the selection and purchase of facility furnishings indicate the fire safety performance requirements of the materials selected.**

*Comment:* Furnishings, mattresses, cushions, or other items of foamed plastics or rubber (e.g., polyurethane, polystyrene) can pose a severe hazard due to high smoke production, rapid burning once ignited, and high heat release. Such materials should receive careful fire safety evaluation before purchase or use, with consideration given to the product’s flammability and toxicity characteristics. All polyurethane should be removed from living areas unless its use is approved in writing by the fire authority having jurisdiction.

**3-JDF-3B-04** (Ref. 2-8176)

**Mandatory**

- 46. Facilities are equipped with noncombustible receptacles for smoking materials and with separate containers for other combustible refuse at accessible locations throughout living quarters in the facility.** Special containers are provided for flammable liquids and for rags used with them. All receptacles and containers are emptied and cleaned daily.

*Comment:* The proper and safe containment of flammable materials and the sanitation of such containers are essential activities in fire prevention.

## **Flammable, Toxic, and Caustic Materials**

**3-JDF-3B-05** (Ref. 2-8182)

**Mandatory**

**47. Written policy, procedure, and practice govern the control and use of all flammable, toxic, and caustic materials**

*Comment:* The following definitions apply to this standard:

- flammable materials—liquids with a flash point below 100 degrees Fahrenheit;
- toxic materials—substances that through chemical reaction or mixture can possibly produce injury or harm to the body by entering through the skin, digestive tract, or respiratory tract (e.g., zinc, chromed paint, ammonia, chlorine, antifreeze, herbicides, pesticides); and
- caustic materials—substances that can destroy or eat away by chemical reaction (e.g., lye, caustic soda, sulfuric acid).

If a substance possesses more than one of the above properties, the safety requirements for all applicable properties should be considered.

All flammable, toxic, and caustic materials should be stored in secure areas that are inaccessible to juveniles, and a prescribed system should be used to account for their distribution. Juveniles should never possess such items unless under the close supervision of qualified staff.

Substances that do not contain one or more of the above properties but that are labeled “Keep Out of the Reach of Children” or “May be Harmful if Swallowed” are not prohibited; their use and control, however, should be addressed in agency policy.

## **Emergency Power and Communications**

**3-JDF-3B-07** (Ref. 2-8208)

**48. Written policy, procedure, and practice provide for a communication system within the facility and between the facility and community in the event of urgent, special, or unusual incidents or emergency situations.**

*Comment:* The facility should have available walkie-talkies and/or a radio base station, receivers, and transmitters, or other independent mechanical means of communication in order to maintain constant contact with the outside community if conventional means of communication are disrupted. Facilities located in areas subject to severe storms, tornadoes, or hurricanes should maintain a ready means of voice communication with the community.

**3-JDF-3B-10** (Ref. New)

**Mandatory**

**49. The facility has a written evacuation plan prepared in the event of fire or major emergency that is certified by an independent, outside inspector trained in the application of appropriate codes.** The plan is reviewed annually, updated as needed, and reissued to the local fire jurisdiction. The plan includes the following:

- location of building/room floor plan;
- use of exit signs and directional arrows for traffic flow;



- location of publicly posted plan;
- monthly drills in all occupied locations of the facility; and
- staff drills when evacuation of dangerous juveniles may not be included.

*Comment:* The evacuation plan should specify routes of evacuation, subsequent disposition and housing of juveniles, and provision for medical care or hospital transportation for injured juveniles and/or staff. Fire drills should include evacuation of all juveniles except when there is clear and convincing evidence that facility security is jeopardized. Upon such showing, actual evacuation during the drill is not required, although the staff supervising such juveniles should be required to perform their roles/activities in monthly drills.

## Emergency Plans

**3-JDF-3B-11** (Ref. 2-8181, 8205, 8207)

### Mandatory

**50. All facility personnel are trained in the implementation of written emergency plans.** Work stoppage and riot/disturbance plans are communicated only to the appropriate supervisory or other personnel directly involved in the implementation of those plans.

*Comment:* A contingency plan for maintaining essential services is crucial. This plan might involve agreements with other law enforcement agencies, such as local or state police. Additionally, the administrator should attempt to ensure the safety and well-being of employees who do not participate in the job action.

**3-JDF-3B-12** (Ref. 2-8180)

### Mandatory

**51. Written policy, procedure, and practice specify the means for the immediate release of juveniles from locked areas in case of emergency and provide for a backup system.**

*Comment:* The responsibilities of personnel in an emergency situation should be clearly defined. Staff should be aware of the location and identification of keys and be knowledgeable about all evacuation routes. Juveniles should receive instructions concerning emergency procedures.

The authority having jurisdiction must certify that locking arrangements allow for prompt release and/or that sufficient staff are available to operate locking devices when necessary. A “backup system” means that there is a manual backup if power-operated locks fail. A control station or other location removed from the juvenile living areas should be equipped with reliable, manual means for releasing locks on swinging and sliding doors to permit prompt release. If the facility has only a manual locking system, a staff plan for manually releasing locks must be in place.

## Threats to Security

**3-JDF-3B-13** (Ref. 2-8203)

**52. There are written procedures regarding escapes.** These procedures are reviewed at least annually and updated as needed.

*Comment:* Specific procedures that can be used quickly when an escape occurs should be made available to all personnel. Procedures should include the following: prompt reporting of the escape to the facility administrator; mobilization of employees; implementation of a predetermined search plan; and notification of law enforcement agencies, community groups, and relevant media.

## Section C: Rules and Discipline

**Principle:** The facility's rules of conduct and sanctions and procedures for violations are defined in writing and communicated to all juveniles and staff. Disciplinary procedures are carried out promptly and with respect for due process.

### Rules of Conduct

#### 3-JDF-3C-02 (Ref. 2-8310)

**53. Written rules of juvenile conduct specify acts prohibited within the facility and penalties that can be imposed for various degrees of violation.**

The written rules are reviewed annually and updated as needed.

*Comment:* The rules should prohibit only observed behavior that can be shown clearly to have a direct, adverse effect on a juvenile or on facility order and security. The rules should also specify the range of penalties that can be imposed for violations. Penalties should be proportionate to the importance of the rule and the severity of the violation.

#### 3-JDF-3C-03 (Ref. 2-8311)

**54. A rulebook that contains all chargeable offenses, ranges of penalties, and disciplinary procedures is given to each juvenile and staff member and is translated into those languages spoken by significant numbers of juveniles.** Signed acknowledgment of receipt of the rulebook is maintained in each juvenile's file. When a literacy or language problem prevents a juvenile from understanding the rulebook, a staff member or translator assists the juvenile in understanding the rules.

*Comment:* Written procedure should specify how the rules and regulations are issued and presented to new juveniles. Rules and regulations governing juvenile conduct are of limited value unless the juveniles understand them. "Posting" the rulebook is unnecessary, provided there is evidence each juvenile receives a copy of the rules.

#### 3-JDF-3C-06 (Ref. 2-8315, 2-8333)

**55. Written policy, procedure, and practice require that prior to room and/or privilege restriction, the juvenile has the reasons for the restriction explained to him/her and has an opportunity to explain the behavior leading to the restriction.**

*Comment:* Prior to restriction for any rule infraction, the juvenile should be given an opportunity to explain the reason(s) for the rule violation.

### **3-JDF-3C-07 (Ref. 2-8316)**

**56. During room restriction, staff contact is made with the juvenile at least every 15 minutes, depending on his/her emotional state.** The juvenile assists in determining the end of the restriction period.

*Comment:* During the period of restriction, a staff person should interact with the juvenile in an effort to solve any problems and to determine a release time.

### **3-JDF-3C-08 (Ref. 2-8314)**

**57. Written policy, procedure, and practice specify that room restriction for minor misbehavior serves only a “cooling off” purpose and is short in time duration, with the time period—15 to 60 minutes—specified at the time of assignment.**

*Comment:* Juveniles are quick to act out and usually just as quick to recover from temper flare-ups. A few minutes’ restriction to their rooms is often all that is needed to correct the situation and permit the juvenile to resume his/her normal routine.

## **Criminal Violations**

### **3-JDF-3C-09 (Ref. 2-8334)**

**58. Written policy, procedure, and practice provide that, where a juvenile allegedly commits an act covered by criminal law, the case should be referred to appropriate court or law enforcement officials for consideration for prosecution.**

*Comment:* Corrections and court or law enforcement officials should agree on the categories of offense that are to be referred in order to eliminate minor offenses or those of no concern.

## **Disciplinary Reports**

### **3-JDF-3C-11 (Ref. 2-8318)**

**59. When a juvenile has been charged with a major rule violation requiring confinement for the safety of the juvenile, other juveniles, or to ensure the security of the facility, the juvenile may be confined for a period of up to 24 hours.** Confinement for periods of over 24 hours is reviewed every 24 hours by an administrator or designee who was not involved in the incident.

*Comment:* None.

## **Section D: Juvenile Rights**

**Principle:** The facility protects the safety and constitutional rights of juveniles and seeks a balance between expression of individual rights and preservation of facility order.

## Access to Courts

**3-JDF-3D-01** (Ref. 2-8299)

**60. Written policy, procedure, and practice ensure the right of juveniles to have access to courts.**

*Comment:* The right of access to the courts minimally provides that juveniles have the right to present any issue, including the following: challenging the legality of their adjudication or confinement; seeking redress for illegal conditions or treatment while under correctional control; pursuing remedies in connection with civil legal problems; and asserting against correctional or other government authority any other rights protected by constitutional or statutory provision or common law. Juveniles seeking judicial relief are not subjected to reprisals or penalties because of the decision to seek such relief.

## Access to Counsel

**3-JDF-3D-02** (Ref. 2-8300)

**61. Written policy, procedure, and practice ensure and facilitate juvenile access to counsel and assist juveniles in making confidential contact with attorneys and their authorized representatives.** Such contact includes but is not limited to telephone communications, uncensored correspondence, and visits.

*Comment:* Facility authorities should assist juveniles in making confidential contact with attorneys and their authorized representatives, which may include law students, special investigators, lay counsel, or other persons who have a legitimate connection with the legal issue being pursued. Provision should be made for visits during normal facility hours, uncensored correspondence, telephone communications, and after-hours visits requested because of special circumstances.

## Protection from Harm

**3-JDF-3D-06** (Ref. 2-8301)

**62. Written policy, procedure, and practice protect juveniles from personal abuse, corporal punishment, personal injury, disease, property damage, and harassment.**

*Comment:* In situations where physical force or disciplinary detention is required, only the least drastic means necessary to secure order or control should be used.

## Grievance Procedures

**3-JDF-3D-08** (Ref. 2-8296)

**63. There is a written juvenile grievance procedure that is made available to all juveniles and that includes at least one level of appeal.**

*Comment:* A grievance procedure is an administrative means for the expression and resolution of juveniles' problems. The facility's grievance mechanism should include provisions for the following:

- written responses to all grievances, including the reasons for the decision;
- response within a prescribed, reasonable time limit, with special provisions for responding to emergencies;
- supervisor review of grievances;
- participation by staff and juveniles in the procedure's design and operation;
- access by all juveniles, with guarantees against reprisals;
- applicability over a broad range of issues; and
- means of resolving questions of jurisdiction.

## **Section E: Special Management**

**Principle:** Juveniles who threaten the secure and orderly management of the facility may be removed from the general population and placed in special units or rooms.

### **Admission and Review**

#### **3-JDF-3E-01 (Ref. New)**

**64. Written policy, procedure, and practice provide special management for juveniles with serious behavior problems and for juveniles requiring protective care.** An individual program plan will be developed.

*Comment:* High-risk juveniles who cannot control their assaultive behavior, who present a danger to themselves, or who are in constant danger of being victimized by other juveniles may require special management. The facility should provide appropriate services and programs for them. It may be necessary to separate them from the general population to allow for individualized attention.

#### **3-JDF-3E-02 (Ref. New)**

**65. The facility administrator or shift supervisor can order immediate placement in a special unit or room when it is necessary to protect the juvenile from self or others.** The action is reviewed within 72 hours by the appropriate authority.

*Comment:* None.

#### **3-JDF-3E-03 (Ref. New)**

**66. The detention facility has a sanctioning schedule that sets a maximum of 5 days of confinement in a security room for any offense, unless otherwise provided by law.**

*Comment:* The time a juvenile spends in disciplinary confinement is proportionate to the offense committed, taking into consideration the juvenile's prior conduct, specific program needs, and other relevant factors. An outside limit should be set for the period of confinement. This limit should be consistent with case law and statutes of the jurisdiction. Where such guidelines do not exist, a maximum of 5 days of disciplinary detention should be considered sufficient for most cases.

### 3-JDF-3E-04 (Ref. 2-8321)

**67. Juveniles placed in confinement are checked visually by staff at least every 15 minutes and are visited at least once each day by personnel from administrative, clinical, social work, religious, or medical units.** A log is kept recording who authorized the confinement, persons visiting the juvenile, the person authorizing release from confinement, and the time of release.

*Comment:* A visit means actual entry into the room of confinement with the juvenile or removal of the juvenile from the room of confinement for the purpose of discussion or counseling. A visit does not include routine visual checks or discussion through the door or window of the confinement room.

### 3-JDF-3E-05 (Ref. 2-8320)

**68. Written policy, procedure, and practice specify that juveniles placed in confinement are afforded living conditions and privileges approximating those available to the general juvenile population.** Exceptions are justified by clear and substantiated evidence.

*Comment:* Placement in room confinement achieves the primary purpose of isolating the juvenile from the general juvenile population. To the extent possible, juveniles in confinement should have a room, food, clothing, exercise, and other services and privileges comparable to those available to the general population. Where services or privileges are denied to juveniles in confinement, written justification should be provided.

## Part IV. Facility Services

### Section A: Food Service

**Principle:** Meals are nutritionally balanced, well-planned, and prepared and served in a manner that meets established governmental health and safety codes.

#### Dietary Allowances

### 3-JDF-4A-03 (Ref. 2-8217, 8218)

#### Mandatory

**69. It is documented that the facility's system of dietary allowances is reviewed annually by a dietitian to ensure compliance with nationally recommended food allowances.**

*Comment:* A facility that follows this system of dietary allowances, as adjusted for age, sex, and activity, ensures the provision of a nutritionally adequate diet. The

Recommended Dietary Allowances stated by the National Academy of Sciences should be used as a guide to basic nutritional needs.

## Menu Planning

**3-JDF-4A-04** (Ref. 2-8219)

**70. Written policy, procedure, and practice require that food service staff develop advanced, planned menus and substantially follow the schedule; and that in the planning and preparation of all meals, food flavor, texture, temperature, appearance, and palatability are taken into consideration.**

*Comment:* All menus, including special diets, should be planned, dated, and available for review at least 1 week in advance. Notations should be made of any substitutions in the meals actually served, and these should be of equal nutritional value. A file of tested recipes adjusted to a yield appropriate for the size of the facility should be maintained on the premises. Food should be served as soon as possible after preparation and at an appropriate temperature. Clinical diets should be approved by a registered dietitian and documented accordingly.

## Special Diets

**3-JDF-4A-06** (Ref. 2-8223)

### Mandatory

**71. Written policy, procedure, and practice provide for special diets as prescribed by appropriate medical or dental personnel.**

*Comment:* Therapeutic diets should be available upon medical or dental authorization. Specific diets should be prepared and served to juveniles according to the orders of the treating physician or dentist, or as directed by the responsible health authority. Medical or dental diet prescriptions should be specific and complete, furnished in writing to the food service manager, and rewritten monthly. Special diets should be kept as simple as possible and should conform as closely as possible to the foods served other juveniles.

**3-JDF-4A-07** (Ref. 2-8225)

**72. Written policy precludes the use of food as a disciplinary measure.**

*Comment:* Food, including snacks, should not be withheld nor the standard menu varied as a disciplinary sanction.

## Health and Safety Regulations

**3-JDF-4A-09** (Ref. 2-8229)

### Mandatory

**73. Written policy, procedure, and practice specify that food services comply with the applicable sanitation and health codes as promulgated by federal, state, and local authorities.**

*Comment:* All health and sanitation codes must be strictly followed in order to ensure the health and welfare of juveniles and staff. At a minimum, all food service personnel should be in good health and free from communicable disease and open, infected wounds; have clean hands and fingernails; wear hairnets or caps; wear clean, washable garments; and employ hygienic food handling techniques.

## Inspections

### 3-JDF-4A-11 (Ref. New)

**74. Written policy, procedure, and practice provide that stored shelf goods are maintained at 45 to 80 degrees Fahrenheit, refrigerated foods at 35 to 40 degrees Fahrenheit, and frozen foods at 0 degrees Fahrenheit or below.**

*Comment:* None.

## Meal Service

### 3-JDF-4A-12 (Ref. 2-8232)

**75. Written policy, procedure, and practice provide that staff members supervise juveniles during meals.**

*Comment:* The practice of having staff members present contributes to a more orderly experience in the dining areas and enhances the relationship between the staff and the population. The practice also minimizes food waste, careless serving, and abuse of a juvenile by another juvenile. It also permits observation and reporting of unusual eating habits of individual juveniles, such as rejection or overeating.

### 3-JDF-4A-13 (Ref. 2-8226)

**76. Written policy, procedure, and practice require that at least three meals, of which two are hot meals, are provided at regular meal times during each 24-hour period, with no more than 14 hours between the evening meal and breakfast.** Provided basic nutritional goals are met, variations may be allowed based on weekend and holiday food service demands.

*Comment:* When juveniles are not routinely absent from the institution for work or other purposes, at least three meals should be provided at regular times during each 24-hour period.

### 3-JDF-4A-14 (Ref. New)

#### **Mandatory**

**77. Written policy, procedure, and practice provide for adequate health protection for all juveniles and staff in the facility and juveniles and other persons working in food service, including the following:**

- Where required by the laws and/or regulations applicable to food service employees in the community where the facility is located, all personnel



involved in the preparation of food receive a pre-assignment medical examination and periodic re-examinations to ensure freedom from diarrhea, skin infections, and other illness transmissible by food or utensils. All examinations are conducted in accordance with local requirements.

- When the facility's food services are provided by an outside agency or individual, the facility has written verification that the outside provider complies with the state and local regulations regarding food service.
- All food handlers are instructed to wash their hands upon reporting to duty and after using toilet facilities.
- Juveniles and other persons working in food service are monitored each day for health and cleanliness by the director of food services or designee.

*Comment:* All food service personnel should be in good health and free from communicable disease and open infected wounds; have clean hands and fingernails; wear hairnets or caps; wear clean, washable garments; and employ hygienic food-handling techniques. Federal facilities should apply appropriate regulations, such as those of the U.S. Public Health Service.

## **Section B: Sanitation and Hygiene**

**Principle:** The facility's sanitation and hygiene program complies with applicable regulations and standards of good practice to protect the health and safety of juveniles and staff.

### **Sanitation Inspections**

**3-JDF-4B-01** (Ref. 2-8234)

**78. Written policy, procedure, and practice require weekly sanitation inspections of all facility areas.**

*Comment:* In addition to the regular inspections by government officials, all facility areas should be inspected at least weekly by a designated staff member who should submit a written report to the administrator documenting deficiencies whenever they occur.

**3-JDF-4B-02** (Ref. 2-8171, 8233)

#### **Mandatory**

**79. The facility administration complies with applicable federal, state, and local sanitation and health codes.**

*Comment:* The facility should be inspected at least annually by appropriate government officials to ensure the health of personnel and juveniles.

### **Water Supply**

**3-JDF-4B-03** (Ref.2-8236)

#### **Mandatory**

**80. The institution's potable water source and supply, whether owned and operated by the public water department or the institution, is approved by**

**an independent, outside source to be in compliance with jurisdictional laws and regulations.**

*Comment:* Safe drinking water is basic to human health and should be provided in any facility operation. In the event jurisdictional laws and regulations are not applicable, the Federal Safe Drinking Water Act Regulations present a standard of quality that is attainable through good water control practices.

## **Waste Disposal**

**3-JDF-4B-04** (Ref. 2-8238)

### **Mandatory**

**81. The institution provides for a waste disposal system in accordance with an approved plan by the appropriate regulatory agency.**

*Comment:* Liquid and solid wastes should be collected, stored, and disposed of in such a way as to avoid nuisance and hazards and protect the health and safety of juveniles and staff.

## **Housekeeping**

**3-JDF-4B-05** (Ref. 2-8237)

### **Mandatory**

**82. Written policy, procedure, and practice provide for the control of vermin and pests.**

*Comment:* Any condition conducive to harboring or breeding insects, rodents, or other vermin should be eliminated immediately. Licensed pest control professionals should be used when necessary to clean or fumigate the facility. Their use on a regular basis is essential.

## **Clothing and Bedding Supplies**

**3-JDF-4B-08** (Ref. 2-8243)

**83. Written policy specifies accountability for clothing and bedding issued to juveniles.**

*Comment:* The issue of all clothing and bedding should be recorded and juveniles should be held accountable for their use.

**3-JDF-4B-10** (Ref. 2-8244)

**84. Juveniles are provided the opportunity to have three complete sets of clean clothing per week.** The facility may provide this clean clothing in several ways, including access to self-serve washer facilities, central clothing, or a combination of the two.

*Comment:* None.

**3-JDF-4B-11** (Ref. 2-8247)

**85. Written policy, procedure, and practice require that the facility provides for the thorough cleaning and, when necessary, disinfecting of juvenile**

**personal clothing before storage or before allowing the juvenile to keep and wear personal clothing.**

*Comment:* Juvenile personal clothing should be cleaned and disinfected to prevent odors and vermin from accumulating and should be stored outside of the juvenile housing area. Cleaning may also be necessary when the juvenile is permitted to keep and wear personal clothing which is not in a clean and sanitary condition.

### **Bedding and Linen Issue**

**3-JDF-4B-12** (Ref. 2-8242)

**86. Written policy, procedure, and practice provide for the issue of suitable clean bedding and linen, including two sheets, pillow and pillowcase, one mattress, and sufficient blankets to provide comfort under existing temperature controls.** There is provision for linen exchange at least weekly.

*Comment:* Collection, storage, and exchange methods for bedding and linens should be done hygienically; that is, blankets, pillows, and mattresses should be cleaned before reissue, and linen and towels must be laundered before reissue. Towels should be exchanged at least three times per week.

### **Bathing and Personal Hygiene**

**3-JDF-4B-13** (Ref. 2-8246)

**87. Written policy, procedure, and practice provide an approved shower schedule which allows daily showers and showers after strenuous exercise.**

*Comment:* None.

**3-JDF-4B-14** (Ref. 2-8240)

**88. Written policy, procedure, and practice require that articles necessary for maintaining proper personal hygiene are provided to all juveniles.**

*Comment:* As part of the admissions process, each juvenile should be given soap, a toothbrush, toothpaste or powder, a comb, and toilet paper. Shaving equipment should be made available upon request, and the special hygiene needs of females should be met.

**3-JDF-4B-15** (Ref. 2-8239)

**89. There are hair care services available to juveniles.**

*Comment:* Barber and beautician's facilities should be provided so that juveniles can obtain hair care services when needed.

## **Section C: Health Care**

**Principle:** The facility provides comprehensive health care services by qualified personnel to protect the health and well-being of juveniles.

## Responsible Health Authority

**3-JDF-4C-01** (Ref. 2-8248)

### **Mandatory**

**90. Written policy, procedure, and practice provide that the facility has a designated health authority with responsibility for health care pursuant to a written agreement, contract, or job description.** The health authority may be a physician, health administrator, or health agency. When the authority is other than a physician, final medical judgments rest with a single designated physician.

*Comment:* The responsibility of the health authority includes arranging for all levels of health care and assuring the quality of all health services and that juveniles have access to them. While overall responsibility may be assumed at the central office level, it is essential that each facility have a responsible health authority; this may be the responsible physician at the facility. Health care services should provide for the physical and mental well-being of the population and include medical and dental services; mental health services; nursing, personal hygiene, and dietary services; health education; and attention to environmental conditions.

**3-JDF-4C-04** (Ref. 2-8286)

**91. Written policy, procedure, and practice provide that when a juvenile is in need of hospitalization, he/she is accompanied by a staff member who stays with the juvenile at least during admission.**

*Comment:* The staff member should provide caring support to the juvenile and should take a copy of the parents' medical release form authorizing him/her to provide consent for medical treatment for the facility pursuant to its custodial authority.

**3-JDF-4C-06** (Ref. 2-8259)

**92. If medical services are delivered in the facility or through contract services, adequate space, equipment, supplies, and materials as determined by the responsible physician are provided for the performance of primary health care delivery.**

*Comment:* The type of space and equipment for an examining room will depend on the level of sophistication of medicine required in the facility and the capabilities of the health providers. In all facilities, space should be provided where the physicians can examine and treat juveniles in private.

## Unimpeded Access to Care

**3-JDF-4C-07** (Ref. 2-8267)

**93. Written policy, procedure, and practice provide for unimpeded access to health care and for a system for processing complaints regarding health care.** These policies are communicated orally and in writing to juveniles upon arrival at the facility, and are put in a language clearly understood by each juvenile.

*Comment:* No member of the correctional staff should approve or disapprove requests for attendance at sick call. The facility should follow the policy of explaining access procedures orally to juveniles unable to read. When the facility frequently has non-English speaking juveniles, procedures should be explained and written in their language.

**3-JDF-4C-08 (Ref. 2-8270)**

**94. When sick call is not conducted by a physician, a physician is available once each week to respond to juveniles' complaints regarding service they did or did not receive from other health care personnel.**

*Comment:* This standard emphasizes the responsible physician's role in assuring accessibility and availability of those levels of care appropriate to the juveniles' need when those services are not personally provided by the responsible physician.

**3-JDF-4C-09 (Ref. 2-8268)**

**95. Juveniles' medical complaints are monitored and responded to daily by medically trained personnel.**

*Comment:* Medical personnel sort and allocate patients to treatment. Control of access to medical care should never be within the decision-making authority of juvenile careworkers or administrative staff, or medical staff below the level of registered nurse.

## **Personnel**

**3-JDF-4C-10 (Ref. 2-8258)**

**96. Appropriate state and federal licensure, certification, or registration requirements and restrictions apply to personnel who provide health care services to juveniles.** The duties and responsibilities of such personnel are governed by written job descriptions approved by the health authority. Verified current credentials and job descriptions are on file in the facility.

*Comment:* Only qualified health care personnel should determine and supervise health care procedures. Written job descriptions should include the required professional qualifications and the individual's specific role in the health care delivery system. Verification of qualifications may consist of copies of current credentials or a letter from the state licensing or certifying body regarding current credential status. Nursing services are performed in accordance with professionally recognized standards of nursing practice and the jurisdiction's Nurse Practice Act.

## **Administration of Treatment**

**3-JDF-4C-11 (Ref, 2-8253)**

**Mandatory**

**97. Written policy, procedure, and practice provide that treatment by health care personnel other than a physician, dentist, psychologist, optometrist, podiatrist, or other independent providers is performed pursuant to written standing or direct orders by personnel authorized by law to give such orders.** Nurse practitioners and physician's assistants may practice within the limits of applicable laws and regulations.

*Comment:* Professional practice acts differ in various states as to issuing direct orders for treatment, so the laws in each state need to be studied for implementation of this standard. Standing medical orders are written for the definitive treatment of identified conditions and for on-site treatment of emergency conditions for any person having the condition to which the order pertains. Direct orders are written specifically for the treatment of one person's particular condition.

**3-JDF-4C-13 (Ref. 2-8266)**

**98. A history of each juvenile's immunizations is obtained when the health appraisal data are collected.** Immunizations are updated, as required, within legal constraints.

*Comment:* Where immunizations are not up-to-date, the facility should immunize to ensure that the juvenile is fully protected. Relevant information should be obtained from parents, family physician, school, or other available source.

**3-JDF-4C-14 (Ref. 2-8289)**

**99. In facilities housing females, obstetrical, gynecological, family planning, and health education services are provided as needed.**

*Comment:* None.

**Current Mental Health Services**

**3-JDF-4C-16 (Ref. 2-8255)**

**100. Written policy, procedure, and practice specify the provision of mental health services for juveniles.** These services include but are not limited to those provided by qualified mental health professionals who meet the educational and license/certification criteria specified by their respective professional disciplines (e.g., psychiatric nursing, psychiatry, psychology, and social work).

*Comment:* An adequate number of qualified staff members should be available to deal directly with juveniles who have severe mental health problems as well as to advise other correctional staff in their contacts with such individuals.

**Health-trained Staff Member**

**3-JDF-4C-17 (Ref. New)**

**101. When facilities do not have full-time, qualified, health-trained personnel, a health-trained staff member coordinates the health delivery services in**

**the facility under the joint supervision of the responsible health authority and facility administrator.**

*Comment:* The health-trained staff member (who is other than a nurse, physician's assistant, or emergency medical technician) may be full-time. Coordination duties may include reviewing receiving screening forms for needed follow-up, readying juveniles and their records for sick call, and assisting in carrying out orders regarding such matters as diets, housing, and work assignments.

## **Pharmaceuticals**

### **3-JDF-4C-18 (Ref. 2-8279)**

#### **Mandatory**

**102. Written policy, procedure, and practice provide for the proper management of pharmaceuticals and address the following subjects:**

- a formulary specifically developed for the facility prescription practices that requires (1) prescription practices, including requirements that psychotropic medications are prescribed only when clinically indicated as one facet of a program of therapy; (2) "stop order" time periods are required for all medications; and (3) the prescribing provider reevaluates a prescription prior to its renewal;
- procedures for medication receipt, storage, dispensing, and administration or distribution;
- maximum security storage and periodic inventory of all controlled substances, syringes, and needles;
- dispensing of medicine in conformance with appropriate federal and state laws;
- administration of medication by persons properly trained and under the supervision of the health authority and facility administrator or designee;
- accountability for administering or distributing medications in a timely manner and according to physician's orders.

*Comment:* The written formulary lists should include all prescribed and nonprescribed medications stocked in the facility or generated by outside health care providers. Any dispensed medication (one or more doses issued from a stock or bulk container) should be labeled with the patient's name, prescription contents, directions for use, and other vital information. The pharmacy may be managed by a resident pharmacist or by health-trained personnel under the supervision of the health authority.

### **3-JDF-4C-19 (Ref. 2-8281)**

**103. Psychotropic drugs, such as antipsychotics or antidepressants, and drugs requiring parenteral administration are prescribed only by a physician or authorized health provider by agreement with the physician, and then only following a physical examination of the juvenile by the health provider. Such drugs are administered by the responsible physician,**

qualified health personnel, or health-trained personnel under the direction of the health authority.

*Comment:* None.

### **3-JDF-4C-20 (Ref. 2-8280)**

**104. The person administering medications has training from the responsible physician and the official responsible for the facility, is accountable for administering medications according to others, and records the administration of medications in a manner and on a form approved by the responsible physician.**

*Comment:* Administration of drugs and remedies referred to in this standard does not include medications administered intramuscularly. Such medications should only be administered by trained medical personnel of at least the level of registered nurse.

## **Health Screenings and Examinations**

### **3-JDF-4C-21 (Ref. 2-8264)**

#### **Mandatory**

**105. Written policy, procedure, and practice require medical, dental, and mental health screening to be performed by health-trained or qualified health care personnel on all juveniles, excluding intrasystem transfers, upon their arrival at the facility.** All findings are recorded on a form approved by the health authority. The screening form includes at least the following:

Inquiry into:

- current illness and health problems, including venereal diseases and other infectious diseases;
- dental problems;
- mental health problems;
- use of alcohol and other drugs, which includes types of drugs used, mode of use, amounts used, frequency of use, date or time of last use, and a history of problems that may have occurred after ceasing use (e.g., convulsions);
- past and present treatment or hospitalization for mental disturbance or suicide attempt; and
- other health problems designated by the responsible physician.

Observation of:

- behavior, which includes state of consciousness, mental status, appearance, conduct, tremor, and sweating;
- body deformities, ease of movement, etc.; and
- condition of skin, including trauma markings, bruises, lesions, jaundice, rashes and infestations, and needle marks or other indications of drug abuse.



Medical disposition of juvenile:

- general population; or
- general population with appropriate referral to health care service; or
- referral to appropriate health care service for emergency treatment.

*Comment:* Health screening is a system of structured inquiry and observation designed to prevent newly arrived juveniles who pose a health or safety threat to themselves or others from being admitted to the facility's general population, and to rapidly transport newly admitted juveniles to health care. Receiving screening can be performed by health care personnel or by health-trained child care/supervision staff at the time of admission. Facilities that have reception and diagnostic units and/or a holding room must conduct receiving screening on all juveniles upon their arrival at the facility as part of the admission procedures.

**3-JDF-4C-23** (Ref. 2-8263)

**Mandatory**

**106. Written policy, procedure, and practice require health screening by health-trained or qualified health care personnel immediately upon arrival at the facility for all intrasystem transfers, with all findings recorded on a screening form approved by the health authority.** The screening includes at a minimum the following:

Inquiry into:

- whether the juvenile is being treated for a medical, dental, or mental health problem;
- whether the juvenile is presently on medication; and
- whether the juvenile has a current medical, dental, or mental health complaint.

Observation of:

- general appearance and behavior;
- physical deformities; and
- evidence of abuse and/or trauma.

Medical disposition of juvenile:

- general population; or
- general population with appropriate referral to health care service; or
- referral to appropriate health care service for emergency treatment.

*Comment:* Screening of intrasystem transfers is necessary for the detection of juveniles who pose a health and/or safety threat to themselves or others and who may require immediate medical attention.

**3-JDF-4C-24** (Ref. 2-8265)

**107. Written policy, procedure, and practice provide for the collection and recording of health appraisal data and require the following:**

- the process is completed in a uniform manner as determined by the health authority;
- health history and vital signs are collected by health-trained or qualified health personnel;
- review of the results of the medical examination, tests, and identification of problems is performed by a physician; and
- collection of all other health appraisal data is performed only by qualified health personnel.

*Comment:* The initial screening must be followed with a more detailed health examination by the appropriate health appraisal personnel to adequately identify the health care needs of the juvenile. It is also important that the examination be performed in a uniform manner to ensure that it is thorough and consistent for each juvenile.

### **Dental Screening and Examination**

**3-JDF-4C-26** (Ref. 2-8272)

#### **Mandatory**

**108. Written policy, procedure, and practice provide for 24-hour emergency medical, dental, and mental health care availability as outlined in a written plan that includes arrangements for the following:**

- on-site emergency first aid and crisis intervention;
- emergency evacuation of the juvenile from the facility;
- use of an emergency medical vehicle;
- use of one or more designated hospital emergency rooms or other appropriate health facilities;
- emergency on-call physician, dentist, and mental health professional services when the emergency health facility is not located in a nearby community; and
- security procedures providing for the immediate transfer of juveniles when appropriate.

*Comment:* Arrangements should be made with nearby hospitals or other facilities for all health services that cannot be appropriately provided within the facility or where contractual arrangements can result in a better or broader range of services. In the event the usual health services are not available, particularly in emergency situations, the facility should have a backup plan to serve the program. The plan might include an alternate hospital emergency service or a physician "on-call" service.

### **First Aid**

**3-JDF-4C-27** (Ref. 2-8273)

## **Mandatory**

**109. Written policy, procedure, and practice provide that juvenile careworker staff and other personnel are trained to respond to health-related situations within a 4-minute response time.** A training program is established by the responsible health authority in cooperation with the facility administrator that includes the following:

- recognition of signs and symptoms and knowledge of action required in potential emergency situations;
- administration of first aid and cardiopulmonary resuscitation (CPR);
- methods of obtaining assistance;
- signs and symptoms of mental illness, retardation, and chemical dependency; and
- procedures for patient transfers to appropriate medical facilities or health care providers.

*Comment:* With even the most adequate staff of qualified health care personnel, emergencies can occur in distant parts of the facility; too much time can be lost in getting staff promptly on the scene to handle emergency matters. All staff should have standard first aid training. Minimally, one juvenile careworker per shift should be trained in CPR and in how to recognize symptoms of illnesses most common to juveniles.

### **3-JDF-4C-28 (Ref. 2-8260)**

**110. Written policy, procedure, and practice require that first aid kit(s) are available.** The responsible physician approves the contents, number, location, and procedure for periodic inspection of the kit(s).

*Comment:* The medical staff develop written procedures outlining the use of first aid kits by nonmedical staff.

### **3-JDF-4C-29 (Ref. 2-8269)**

**111. Sick call for nonemergency medical service, conducted by a physician and/or other qualified medical personnel, is available to each juvenile at least three times a week.**

*Comment:* Sick call is the procedure through which each juvenile reports and receives appropriate medical services for nonemergency illness or injury.

### **3-JDF-4C-30 (Ref. 2-8277)**

**112. Written policy, procedure, and practice provide for a special health program for juveniles requiring close medical supervision.** A written individual treatment plan, which includes directions to health care and other personnel regarding their roles in the care and supervision of the patient, is developed for each juvenile by appropriate physician, dentist, or qualified mental health practitioner.

*Comment:* Medical conditions requiring close medical supervision include seizure disorders, potential suicide, chemical dependency, and psychosis.

## Chronic and Convalescent Care

**3-JDF-4C-31** (Ref. 2-8274)

**113. Chronic care, convalescent care, and medical preventive maintenance are provided to juveniles when medically indicated.**

*Comment:* Chronic care is medical service rendered to a patient over a long period of time. Convalescent care is medical service rendered to a patient to assist the recovery from illness or injury. Medical preventive maintenance is health education and medical services provided as advance measures against disease and as instruction in self-care for chronic conditions.

## Transfer for Needed Care

**3-JDF-4C-33** (Ref. 2-8256)

**114. A written agreement exists between the facility and a nearby hospital for all medical services that cannot be provided at the facility.**

*Comment:* Medical arrangements may be entered into for the provision of emergency or specialized care away from the facility. This standard includes crisis intervention for psychiatric emergencies.

## Suicide Prevention and Intervention

**3-JDF-4C-35** (Ref. New)

**115. There is a written suicide prevention and intervention program that is reviewed and approved by a qualified medical or mental health professional.** All staff with responsibility for juvenile supervision are trained in the implementation of the program, which includes specific procedures for intake screening, identification, and supervision of suicide-prone juveniles.

*Comment:* None.

**3-JDF-4C-36** (Ref. New)

**116. Written policy, procedure, and practice specify approved actions to be taken by employees concerning juveniles who have been diagnosed HIV positive.** This policy shall include at a minimum the following:

- when and where juveniles are to be tested;
- appropriate safeguards for staff and juveniles;
- when and under what conditions juveniles are to be separated from the general population;
  - staff and juvenile training procedures; and
- issues of confidentiality.

*Comment:* None.

**3-JDF-4C-37** (Ref. New)

**117. Written policy, procedure, and practice address the management of serious and infectious diseases.** These policies and procedures are updated as new information becomes available. Agencies should work with the responsible health authority in establishing policy and procedures that include the following: an ongoing education program for staff and residents; control, treatment, and prevention strategies that may include screening and testing, special supervision, and/or special housing arrangements, as appropriate; protection of individual confidentiality; and media relations.

*Comment:* Because of their serious nature, methods of transmission, and public sensitivity, infectious diseases such as tuberculosis, hepatitis-B, and AIDS (acquired immunodeficiency syndrome) require special attention.

**3-JDF-4C-38** (Ref. 2-8261)

**118. Written policy, procedure, and practice provide for medical examination of any employee or juvenile suspected of a communicable disease.**

*Comment:* The examination must be conducted and the results made available quickly to ensure prompt and proper treatment of the problem.

### Juvenile Participation in Research

**3-JDF-4C-43** (Ref. 2-8290)

**Mandatory**

**119. Written policy prohibits the use of juveniles for medical, pharmaceutical, or cosmetic experiments.** This policy does not preclude individual treatment of a juvenile based on his or her need for a specific medical procedure that is not generally available.

*Comment:* A person confined in a facility is incapable of volunteering as a human subject without hope of reward and cannot do so on the basis of fully informed consent. Therefore, juveniles should not participate in experimental projects involving medical, pharmaceutical, or cosmetic research, including aversive conditioning, psychosurgery, electrical stimulation of the brain, or the application of cosmetic substances to the body that are being tested for possible commercial use. This prohibition does not preclude individual treatment of a juvenile by his or her physician with a new medical procedure, subsequent to a full explanation of the treatment's positive and negative features. The agreement is between the physician and the juvenile, and is not part of a general program of medical experimentation involving payment to juveniles for submission to treatment.

**3-JDF-4C-44** (Ref. 2-8282)

**120. Under no circumstances is a stimulant, tranquilizer, or psychotropic drug to be administered for purposes of program management and control, or for purposes of experimentation and research.**

*Comment:* The policy regarding the prescription of stimulants, tranquilizers, or psychotropic medications states that these medications are dispensed only when clinically indicated and as one facet of a program of therapy. This policy also states

that the administration of these medications is not allowed for disciplinary reasons and discourages long-term use of tranquilizers by minors.

### **Notification of Designated Individuals**

#### **3-JDF-4C-45 (Ref. 2-8271)**

**121. Written policy, procedure, and practice provide for the prompt notification of juveniles' parents/guardians and the responsible agency in case of serious illness, surgery, injury, or death.**

*Comment:* Whenever a juvenile becomes seriously ill or injured, requires surgery, or dies, the juvenile's parents/guardians and the responsible agency are promptly notified by telephone, telegram, or other rapid means of communication. In the event of death, the head of the agency should also be notified. If death occurred under unusual circumstances, the coroner and appropriate law enforcement officials should be notified.

### **Health Record Files**

#### **3-JDF-4C-46 (Ref. 2-8283)**

**122. The health record file contains the following:**

- the completed receiving screening form;
- health appraisal data forms;
- all findings, diagnoses, treatments, and dispositions;
- prescribed medications and their administration;
- laboratory, x-ray, and diagnostic studies;
- signature and title of documenter;
- consent and refusal forms;
- release-of-information forms;
- place, date, and time of health encounters;
- health service reports (e.g., dental, mental health, and consultations);
- treatment plan, including nursing care plan;
- progress reports; and
- discharge summary of hospitalization and other termination summaries.

The method of recording entries in the records, the form and format of the records, and the procedures for their maintenance and safekeeping are approved by the health authority.

*Comment:* The "problem-oriented medical record" structure is suggested; however, whatever the records structure, every effort should be made to establish uniformity of record forms and content throughout the correctional system. The record is to be complete and all findings recorded, including notations concerning mental health, dental, and consultative services, at the time of service delivery or no later than 14 days from time of discharge of the patient or termination of treatment. The receiving screening form becomes a part of the record at the time of the first health encounter.

### 3-JDF-4C-47 (Ref. 2-8284)

**123. Written policy, procedure, and practice uphold the principle of confidentiality of the health record and support the following requirements:**

- the active health record is maintained separately from the confinement record;
- access to the health record is controlled by the health authority; and
- the health authority shares with the facility administrator information regarding a juvenile's medical management, security, and ability to participate in programs.

*Comment:* The principle of confidentiality protects the patient from disclosure of confidences entrusted to a health care provider during the course of treatment. The confidential relationship of doctor and patient extends to juvenile patients and their physicians or other providers. Thus, it is necessary to maintain active health record files under security, completely separate from the patient's confinement record.

## Transferred and Inactive Records

### 3-JDF-4C-48 (Ref. 2-8288)

**124. For juveniles being transferred to other facilities, summaries or copies of the medical history record are forwarded to the receiving facility prior to or at arrival.**

*Comment:* Because the receiving facility has responsibility for medical care of new arrivals, it is imperative that it receives all available medical information as soon as possible. Written authorization by the juvenile is not required for the transfer of this information. This will reduce duplication of screening procedures, assure continuity in treatment, and reduce the need for segregation until the existence of contagious diseases can be determined.

## Part V. Juvenile Services

### Section A: Intake and Admission

**Principle:** All incoming juveniles undergo thorough screening and assessment at intake and receive thorough orientation to the facility's procedures, rules, programs, and services.

#### Intake

### 3-JDF-5A-02 (Ref. 2-8349, 2-8350)

**125. Written procedures for admission of juveniles new to the system include but are not limited to the following:**

- determination that the juvenile is legally committed to the facility;
- complete search of the juvenile and possessions;

- disposition of personal property;
- shower and hair care, if necessary;
- issue of clean, laundered clothing, as needed;
- issue of personal hygiene articles;
- medical, dental, and mental health screening;
- assignment to a housing unit;
- recording of basic personal data and information to be used for mail and visiting lists;
- assistance to juveniles in notifying their families of their admission and procedures for mail and visiting;
- assignment of a registered number to the juvenile; and
- provision of written orientation materials to the juvenile.

*Comment:* Juveniles coming into the system may be unfamiliar with staff expectations and not understand what is expected of them. Staff members should explain procedures at each step in the admissions process.

## New Juveniles

### 3-JDF-5A-15 (Ref. 2-8351)

**126. Written policy, procedure, and practice provide that new juveniles receive written orientation materials and/or translations in their own language if they do not understand English.** When a literacy problem exists, a staff member assists the juvenile in understanding the material. Completion of orientation is documented by a statement signed and dated by the juvenile.

*Comment:* Orientation should include informal classes, distribution of written materials about the facility's programs, rules and regulations, and discussion. Orientation should also be used to observe juvenile behavior and to identify special problems.

## Personal Property

### 3-JDF-5A-16 (Ref. 2-8352)

**127. Written policy, procedure, and practice govern the control and safeguarding of juvenile personal property.** Personal property retained at the facility is itemized in a written list that is kept in the permanent case file; the juvenile receives a current copy of this list.

*Comment:* All personal property retained at the facility should be accurately inventoried and securely stored. The inventory list should be signed by the juvenile and a receipt given to the juvenile for all funds and possessions stored. The property should be available if required by the juvenile and should be returned at the time of release, with a receipt signed by the juvenile acknowledging return of the property.

## Section B: Social Service

**Principle:** The facility makes available the professional services necessary to meet the identified needs of juveniles. Such services may include individual and family counseling, family planning and parent education, and programs for juveniles with drug and alcohol addiction problems.



## Counseling

### 3-JDF-5B-04 (Ref. 2-8375)

**128. Written policy, procedure, and practice provide that staff members are available to counsel juveniles at their request; provision is made for counseling juveniles on an emergency basis.**

*Comment:* In assisting juveniles with their personal problems and with adjustment to the facility, staff members should make time available on a regularly scheduled basis for appointments with juveniles who request it. Because juveniles may have problems that require immediate attention, at least one staff member should be available 24 hours a day.

### 3-JDF-5B-05 (Ref. New)

**129. Written policy, procedure, and practice provide for juvenile access to mental health counseling and crisis intervention services in accordance with their needs.**

*Comment:* Juveniles placed in detention facilities are, in some cases, highly disturbed; therefore, it is imperative that mental health, psychiatric, and crisis intervention services are available on an as-needed basis. Treatment offerings should include group therapy and group and individual counseling.

## Section C: Academic, Vocational, and Work

**Principle:** A written body of policy and procedures governs the facility's academic, vocational education, and work programs for juveniles, including program accreditation, staff certification, and coordination with other facility programs and services as well as with the community.

### Comprehensive Education Program

#### 3-JDF-5C-01 (Ref. 2-8356)

**130. There is a comprehensive education program for juveniles.**

*Comment:* The facility should provide juveniles with a broad educational program that is most suited to their needs and abilities and includes but is not limited to: developmental education; remedial education; special education; multicultural education; bilingual education, when the profile indicates; and tutorial services as needed. This program should operate under the auspices of the year-round school system.

#### 3-JDF-5C-03 (Ref. 2-8359)

**131. The educational program is supported by specialized equipment that meets minimum state education standards.**

*Comment:* Regardless of the extent of the educational program, specialized equipment is essential.

## Vocational/Work Programs

### 3-JDF-5C-05 (Ref. 2-8302)

**132. Juveniles are not required to participate in uncompensated work assignments unless the work is related to housekeeping, maintenance of the facility or grounds, personal hygienic needs, or part of an approved training or community service program.**

*Comment:* Work that benefits the community or the facility may also serve the needs of the confined juveniles. It may be part of a training program, the opportunity to practice existing skills, or simply a relief from boredom. Juveniles in the custody of the INS may not participate in compensated work assignments.

### 3-JDF-5C-06 (Ref. 2-8379)

**133. Juveniles are not permitted to perform any work prohibited by state and federal regulations and statutes pertaining to child labor.**

*Comment:* Juveniles in detention facilities should not be permitted to perform work that juveniles in the community would be prohibited from performing pursuant to state and federal child labor laws.

## Section D: Library

**Principle:** A written body of policy and procedure governs the facility's library program, including acquisition of materials, hours of availability, and staffing.

### Comprehensive Library Services

#### 3-JDF-5D-03 (Ref. 2-8366)

**134. Library services are provided and available to all juveniles.**

*Comment:* Every effort should be made to become part of a local library system. Young people should be encouraged to check out books and other library materials. Library services may be provided in the facility to include reading materials for nonlibrary hours. Reading material should reflect racial and ethnic interests and be appropriate for various levels of competency.

## Section E: Recreation and Activities

**Principle:** A written body of policy and procedures governs the facility's recreation and activities and programs for juveniles, including program coordination and supervision, facilities and equipment, community interaction, and activities initiated by juveniles.

### Equipment

### 3-JDF-5E-04 (Ref. 2-8363)

**135. Written policy, procedure, and practice provide a recreation and leisure time plan that includes at a minimum at least 1 hour per day of large muscle activity and 1 hour of structured leisure time activities.**

*Comment:* Large muscle development and opportunities for play and creative activity are essential for the growing youth. There should be opportunities for exercise and constructive leisure time activity for at least 2 hours on school days and 3 hours on non-school days, not including time spent watching television.

## Section F: Religious Programs

**Principle:** A written body of policy and procedures governs the institution's religious programs for juveniles, including program coordination and supervision, opportunities to practice the requirements of one's faith, and use of community resources.

### Staff and Space Requirements

#### 3-JDF-5F-03 (Ref. 2-8297)

**136. Written policy, procedure, and practice provide that juveniles have the opportunity to participate in practices of their religious faith that are deemed essential by the faith's judicatory, limited only by documentation showing threat to the safety of persons involved in such activity, or that the activity itself disrupts order in the facility.**

*Comment:* Religious practices shall include but are not limited to: access to religious publications; religious symbols; worship/religious services in appropriate space; individual and group counseling; religious study classes; and adherence to dietary requirements.

## Section G: Mail, Telephone, Visiting

**Principle:** A written body of policy and procedure governs the facility's mail, telephone, and visiting services for juveniles, including mail inspection, public phone use, and routine and special visits.

### Mail

#### 3-JDF-5G-01 (Ref. 2-8380)

**137. Written policy and procedures governing correspondence of juveniles are made available to all staff and juveniles and are reviewed annually and updated as needed.**

*Comment:* None.

#### 3-JDF-5G-02 (Ref. 2-8381)

**138. When the juvenile bears the mailing cost, there is no limit on the volume of letters he/she can send or receive.**

*Comment:* None.

**3-JDF-5G-03 (Ref. 2-8387)**

**139. Written policy, procedure, and practice provide that indigent juveniles, as defined in policy, receive a specified postage allowance to maintain community ties.**

*Comment:* A juvenile without financial resources should be provided the means to send a reasonable number of letters per month. Community ties include family, personal friends, etc., but not privileged communication to attorney, public officials, and courts.

**3-JDF-5G-04 (Ref. 2-8386)**

**140. Written policy, procedure, and practice specify that juveniles are permitted to send sealed letters to a specified class of persons and organizations including but not limited to: courts, counsel, officials of the confining authority, administrators of grievance systems, and members of the releasing authority.**

*Comment:* Mail from juveniles to a specified class of persons and organizations should not be opened; mail to juveniles from this specified class of persons and organizations may be opened only to inspect for contraband and only in the presence of the juvenile.

**3-JDF-5G-05 (Ref. 2-8304)**

**141. Written policy, procedure, and practice grant juveniles the right to communicate or correspond with persons or organizations, subject only to the limitations necessary to maintain facility order and security.**

*Comment:* Access to the public is an integral part of rehabilitation. Juveniles should be permitted to communicate with their families and friends, as well with public officials, the courts, and their attorneys. No correspondence should be censored.

### **Inspection of Letters and Packages**

**3-JDF-5G-07 (Ref. 2-8382, 2-8383)**

**142. Written policy, procedure, and practice provide that juveniles' mail, both incoming and outgoing, may be opened and inspected for contraband.** Mail is read, censored, or rejected when based on legitimate facility interest of order and security. The juvenile is notified when incoming or outgoing letters are withheld in part or in full.

*Comment:* Juveniles should be permitted uncensored correspondence so long as it poses no threat to the safety and security of the facility, public officials, or the general public and is not being used in the furtherance of illegal activities. Case law has defined legal limits. When mail is censored or rejected, the juvenile or author

should be notified of the reasons for the action and provided an opportunity to appeal the decision.

**3-JDF-5G-08** (Ref. 2-8384)

**143. Written policy, procedure, and practice require that all cash received through the mail is held for the juvenile in accordance with procedures approved by the parent agency.**

*Comment:* The administration should have discretion to control the flow of cash to juveniles. However, when cash is intercepted and withheld by the facility, it must be in accordance with written procedures that specify who is responsible for the cash, where it is to be deposited, and the method of return or transferal upon the juvenile's release or placement.

**3-JDF-5G-09** (Ref. 2-8385)

**144. Written policy, procedure, and practice require that incoming and outgoing letters are held for no more than 24 hours, and packages for no more than 48 hours, excluding weekends and holidays.**

*Comment:* Inspection for contraband in letters should take no longer than 24 hours to complete, so that incoming letters should be distributed to juveniles and outgoing letters sent to the post office within 24 hours of receipt. Inspection of packages should take no longer than 48 hours to complete; packages should be distributed or sent to the post office within 48 hours of receipt.

## Forwarding of Mail

**3-JDF-5G-10** (Ref. 2-8393)

**145. Written policy, procedure, and practice provide for the forwarding of first class letters and packages after transfer or release.**

*Comment:* All first class letters and packages should be forwarded to juveniles who are transferred to other facilities or released, provided a forwarding address is available. If a forwarding address is not available, first class letters and packages should be returned to the sender. Post office policy and procedure should be made available to juveniles.

## Telephone

**3-JDF-5G-11** (Ref. 2-8392)

**146. Written policy, procedure, and practice provide for juvenile access to the telephone to make and receive personal calls.**

*Comment:* Sufficient telephone facilities should be provided to permit reasonable and equitable access by all juveniles, except those in reception units and disciplinary confinement. Written procedures should specify the hours of telephone availability, maximum length of calls, and any limitations on telephone calls. Telephone facilities should allow for a reasonable amount of privacy. All long distance calls should be made collect.

## Visiting

### 3-JDF-5G-12 (Ref. 2-8303)

**147. Written policy, procedure, and practice grant juveniles the right to receive visits, subject only to the limitations necessary to maintain facility order and security.**

*Comment:* Because strong family and community ties increase the likelihood that the juvenile will succeed after release, visits should be encouraged. Provision should be made for visitation in pleasant surroundings, with minimum surveillance to ensure privacy. Arrangements must be made to allow confidential visits with attorneys. No restrictions should be placed on juvenile visitation rights except where the facility administrator or designee can provide substantial justification for the restriction.

### 3-JDF-5G-13 (Ref. 2-8389)

**148. Written policy, procedure, and practice provide that juvenile visiting facilities permit informal communication, including opportunity for physical contact.**

*Comment:* The degree of informality of juvenile visiting facilities should be consistent with the facility's overall security requirements. The use of devices that preclude physical contact should be avoided except in instances of substantiated security risk.

### 3-JDF-5G-14 (Ref. 2-8391)

**149. Written policy, procedure, and practice govern special visits.**

*Comment:* Special visits may include visits from persons who have come long distances, visits to hospitalized juveniles, visits to juveniles in disciplinary status, and visits between juveniles and their attorneys. Written policies and procedures should specify the conditions of such visits.

### 3-JDF-5G-15 (Ref. 2-8390)

**150. Written policy, procedure, and practice specify (1) that visitors register on entry into the facility and (2) the circumstances under which visitors are searched and supervised during the visit.**

*Comment:* Each visitor should be required to register his/her name, address, and relation to the juvenile upon entry. Staff members may search visitors and their belongings.

## Section H: Release

**Principle:** The facility provides a structured program to help juveniles make a satisfactory transition upon their release from detention.

## Release Preparation

### 3-JDF-5H-02 (Ref. 2-8395)

**151. Written procedures for releasing juveniles include but are not limited to the following:**

- verification of identity;
- verification of release papers;
- completion of release arrangements, including the person or agency to whom the juvenile is to be released;
- return of personal effects;
- completion of any pending action, such as grievances or claims for damaged or lost possessions;
- medical screening and arrangements for community follow-up when needed;
- transportation arrangements; and
- instructions on forwarding of mail.

*Comment:* The release process should ensure that all matters relating to the facility are completed. If the juvenile is to be released to his or her family, the person accepting the juvenile should be identified, or an unescorted release must be verified. If released to another agency, everyone involved should understand what is to occur with respect to timing, expectations, forwarding of records, and who will complete the transfer. The party or entity responsible for or having legal custody of the juvenile must also be notified.

### 3-JDF-5H-07 (Ref. New)

**152. Written policy, procedure, and practice provide for and govern escorted and unescorted day leaves into the community.**

*Comment:* There should be provision to escort juveniles into the community for needed medical and dental care; to visit ill family members or attend funerals; and to participate in community affairs and/or events that would have a positive influence on the juvenile. Unescorted or day leaves should be extended for a variety of reasons related to the juvenile's planned return to the community and should be consistent with public safety.

| <b>INS Juvenile Shelter Care Standards Checklist</b>                    |   | <b>Rating 1–5:</b><br>1=in compliance; 2=not in compliance;<br>3= exception noted; 4=staff information; 5=confirmed |   |   |   |   |
|---|---|---|---|---|---|---|
| <b>A. Administration and Management (Part I of JCRF manual)<u>2</u></b> |   | 1   | 2 | 3 | 4 | 5 |
| 1.  | Written policy provides that the facility and its programs are managed by a single administrative officer (3-JCRF-1A-06). |   |   |   |   |   |

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|--|--|--|--|--|--|
| 2. Facility administrator qualifications include a bachelor's degree in a related discipline and demonstrated ability and leadership (3-JCRF-1A-07).   |  |  |  |  |  |
| 3. Written policy provides that new or revised policies and procedures are disseminated to designated staff and volunteers (3-JCRF-1A-13).   |  |  |  |  |  |
| 4. Written policy provides for regular meetings, at least monthly, between the administrator and key staff members (3-JCRF-1A-14).   |  |  |  |  |  |
| 5. Written policy provides that firearms are not permitted in the facility (3-JCRF-1A-22).   |  |  |  |  |  |
| 6. The facility has written fiscal policies and procedures adopted by the governing authority that meet minimum requirements (3-JCRF-1B-02).   |  |  |  |  |  |
| 7. Written policy provides that any financial transactions between juveniles, staff, and others are approved by the administrator (3-JCRF-1B-17).  |  |  |  |  |  |
| 8. Written policy prohibits sexual harassment (3-JCRF-1C-04).  |  |  |  |  |  |
| 9. Written policy specifies support for a drug-free workplace for all employees and includes certain minimum principles (3-JCRF-1C-05).  |  |  |  |  |  |
| 10. Written policy provides that there are written job descriptions and qualifications for all positions in the facility (3-JCRF-1C-06).   |  |  |  |  |  |
| 11. A criminal record check is conducted on all new employees, according to state and federal statutes (3-JCRF-1C-10).   |  |  |  |  |  |
| 12. Written policy provides that employees who work with juveniles receive a physical examination (3-JCRF-1C-11).  |  |  |  |  |  |
| 13. Written policy provides that all personnel working with juveniles are informed and agree in writing to confidentiality policies (3-JCRF-1C-17).  |  |  |  |  |  |
| 14. The facility provides initial orientation for all new employees during their first week of employment (3-JCRF-1D-03).  |  |  |  |  |  |
| 15. Written policy provides that all training programs are conducted by qualified trainers in that particular area (3-JCRF-1D-05).   |  |  |  |  |  |
| 16. Written policy provides that administrative, managerial, and professional specialist staff receive 40 hours of training (beyond orientation) during their 1st year and 40 hours a year thereafter (3-JCRF-1D-09).      |  |  |  |  |  |
| 17. Written policy provides that all juvenile careworkers receive an additional 120 hours of training during their 1st year and 40 hours a year thereafter (3-JCRF-1D-10).   |  |  |  |  |  |
| 18. Written policy provides that all support employees with regular or daily contact with juveniles receive 40 hours of training (beyond orientation) during their 1st year and 40 hours a year thereafter (3-JCRF-1D-11). |  |  |  |  |  |

(table continued on next page)

|   |  |  |  |  |  |
|---|--|--|--|--|--|
| 19. All part-time staff, volunteers, and contractors receive formal orientation appropriate to their assignments, with training as needed (3-JCRF-1D-13). |  |  |  |  |  |
|---|--|--|--|--|--|



|  |   |   |   |   |   |
|--|---|---|---|---|---|
| 20. Written policy governs case record management, to include several minimum areas (3-JCRF-1E-01).  |   |   |   |   |   |
| 21. Written policy provides that a record is maintained for each juvenile that includes several minimum components (3-JCRF-1E-02).                         |   |   |   |   |   |
| <b>INS Juvenile Shelter Care Standards Checklist</b>   | <b>Rating 1–5:</b><br>1=in compliance; 2=not in compliance;<br>3= exception noted; 4=staff information; 5=confirmed |   |   |   |   |
| <b>A. Administration and Management—Cont.</b>  | 1   | 2 | 3 | 4 | 5 |
| 22. Written policy provides for the auditing of juvenile records at least monthly (3-JCRF-1E-03).  |   |   |   |   |   |
| 23. Written policy provides that appropriate safeguards exist to minimize the possibility of theft, loss, or destruction of records (3-JCRF-1E-05).        |   |   |   |   |   |
| 24. Written policy provides that an updated case file is transferred along with a juvenile either simultaneously or within 72 hours (3-JCRF-1E-06).        |   |   |   |   |   |
| 25. Written policy provides that records are safeguarded from unauthorized or improper disclosure (3-JCRF-1E-07).  |   |   |   |   |   |
| 26. Written policy governs the voluntary participation of juveniles in non-medical, nonpharmaceutical, and noncosmetic research (3-JCRF-1F-09).            |   |   |   |   |   |
| 27. A staff member is responsible for supervising citizen involvement and volunteer service programs that benefit juveniles (3-JCRF-1G-01).                |   |   |   |   |   |
| 28. Volunteers agree in writing to honor facility policies, particularly those relating to the security and confidentiality of information (3-JCRF-1G-05). |   |   |   |   |   |
| 29. Written policy provides that all volunteers complete an appropriate, orientation and/or training program before being assigned (3-JCRF-1G-07).         |   |   |   |   |   |
| 30. Written policy specifies that volunteers may perform professional services only when they are certified or licensed to do so (3-JCRF-1G-08).           |   |   |   |   |   |
| <b>B. Physical Plant (Part II of JCRF manual)</b>  | 1   | 2 | 3 | 4 | 5 |
| 31. The facility conforms to all applicable state and local building codes (3-JCRF-2A-01).   |   |   |   |   |   |
| 32. Exits in the facility comply with state or local fire authorities or the authority having jurisdiction (3-JCRF-2A-03).                                 |   |   |   |   |   |
| 33. The number of juveniles does not exceed the facility's rated bed capacity (3-JCRF-2B-03).  |   |   |   |   |   |
| 34. Each sleeping room complies with minimum requirements for privacy, comfort, light, space, and temperature (3-JCRF-2C-01).                              |   |   |   |   |   |
| 35. Living rooms with space for varied activities are available (3-JCRF-2C-02).  |   |   |   |   |   |
| 36. Written policy provides that the facility permits juveniles to decorate their living and   |   |   |   |   |   |

|   |   |   |   |   |   |
|---|---|---|---|---|---|
| sleeping quarters with personal possessions (3-JCRF-2C-03).   |   |   |   |   |   |
| 37. The facility has, at minimum, one operable toilet for every eight juveniles (3-JCRF-2C-04).   |   |   |   |   |   |
| 38. The facility has, at minimum, one operable shower or bathing facility with hot and cold running water for every eight juveniles (3-JCRF-2C-05).         |   |   |   |   |   |
| 39. The facility has, at minimum, one operable wash basin with hot and cold running water for every eight juveniles (3-JCRF-2C-06).                         |   |   |   |   |   |
| 40. Written policy provides that juveniles with disabilities are housed in a safe and secure manner (3-JCRF-2C-08).   |   |   |   |   |   |
| 41. Written policy provides that all sleeping quarters in the facility are well-lighted and properly ventilated (3-JCRF-2D-01).                             |   |   |   |   |   |
| 42. Temperatures in indoor living and work areas are appropriate to summer and winter comfort zones (3-JCRF-2D-02).   |   |   |   |   |   |
| 43. Adequate space and furnishings to accommodate activities, such as group meetings of the juveniles, are provided in the facility (3-JCRF-2E-01).         |   |   |   |   |   |
| 44. The facility provides adequate private counseling space (3-JCRF-2E-02).   |   |   |   |   |   |
| 45. Written policy provides for adequate and appropriate areas for visitation and for recreation programs (3-JCRF-2E-03).                                   |   |   |   |   |   |
| 46. Adequate dining space is provided for the juveniles (3-JCRF-2E-04).   |   |   |   |   |   |
| <b>INS Juvenile Shelter Care Standards Checklist</b>  | <b>Rating 1–5:</b><br>1=in compliance; 2=not in compliance;<br>3= exception noted; 4=staff information; 5=confirmed |   |   |   |   |
| <b>B. Physical Plant—Cont. (Part II of JCRF manual)</b>   | 1   | 2 | 3 | 4 | 5 |
| 47. When the facility has a kitchen, the kitchen, dining, and food storage areas are properly ventilated, furnished, and cleaned (3-JCRF-2E-05).            |   |   |   |   |   |
| 48. The facility has adequate space for janitorial supplies (3-JCRF-2E-07).   |   |   |   |   |   |
| 49. Space is provided to store and issue clothing, bedding, cleaning supplies, and other items required for daily operations (3-JCRF-2E-08).                |   |   |   |   |   |
| 50. Adequate space is provided for storing the personal property of juveniles (3-JCRF-2E-09).   |   |   |   |   |   |
| 51. The facility has controls to keep juveniles safely within the facility and to prevent unauthorized access by the general public (3-JCRF-2G-01).         |   |   |   |   |   |
| <b>C. Facility Operations (part III of JCRF manual)</b>   | 1   | 2 | 3 | 4 | 5 |
| 52. Written policy limits physical force to self-protection, protection of juvenile or others, and prevention of property damage and escape (3-JCRF-3A-02). |   |   |   |   |   |
| 53. Written policy provides that at least one staff person is readily available 24 hours a day,   |   |   |   |   |   |

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| and is responsive to juveniles' needs (3-JCRF-3A-03).  |   |  |  |  |  |
| 54. Written policy provides that the staffing pattern concentrates staff when most juveniles are in the facility (3-JCRF-3A-04).                             |   |  |  |  |  |
| 55. Written policy provides that no juvenile or group of juveniles is in a position of control or authority over other juveniles (3-JCRF-3A-05).             |   |  |  |  |  |
| 56. Written policy requires staff to keep a permanent log and to prepare shift reports that record both routine and unusual occurrences (3-JCRF-3A-06).      |   |  |  |  |  |
| 57. Written policy provides for the detection and reporting of absconders (3-JCRF-3A-08).  |   |  |  |  |  |
| 58. Written policy provides that staff monitor the movement of juveniles into and out of the facility (3-JCRF-3A-09).  |   |  |  |  |  |
| 59. Written policy provides that juveniles and adults not share sleeping rooms (3-JCRF-3A-10).   |   |  |  |  |  |
| 60. Written policy provides that male and female juveniles do not occupy the same sleeping rooms (3-JCRF-3A-11).   |   |  |  |  |  |
| 61. Written policy provides for searches to control contraband and its disposition at a level keeping with security needs (3-JCRF-3A-12).                    |   |  |  |  |  |
| 62. Written policy governs the control and use of tools, equipment, and keys (3-JCRF-3A-13).   |   |  |  |  |  |
| 63. The facility complies with the regulations of the state or local fire safety authority, whichever has primary jurisdiction (3-JCRF-3B-01).               |   |  |  |  |  |
| 64. Written policy specifies fire prevention regulations and practices to ensure the safety of staff, juveniles, and visitors (3-JCRF-3B-02).                |   |  |  |  |  |
| 65. Written policy provides that the specifications for selecting and purchasing facility furnishings meet fire safety requirements (3-JCRF-3B-03).          |   |  |  |  |  |
| 66. Written policy provides that where smoking is permitted, noncombustible receptacles are available throughout living quarters (3-JCRF-3B-04).             |   |  |  |  |  |
| 67. Written policy governs the control and use of all flammable, toxic, and caustic materials (3-JCRF-3B-05).  |   |  |  |  |  |
| 68. The facility has a written evacuation plan for fire or major emergency that is certified by an independent outside fire safety inspector (3-JCRF-3B-06). |   |  |  |  |  |
| 69. Written policy provides that fire drills are conducted at least monthly (3-JCRF-3B-07).  |   |  |  |  |  |
| 70. Written emergency plans are disseminated to appropriate local authorities (3-JCRF-3B-08).  |   |  |  |  |  |
| <b>INS Juvenile Shelter Care Standards Checklist</b>   | <b>Rating 1–5:</b><br>1=in compliance; 2=not in compliance;<br>3= exception noted; 4=staff information; 5=confirmed |  |  |  |  |

| <b>C. Facility Operations—Cont. (Part III of JCRF manual)</b>  | 1 | 2 | 3 | 4 | 5 |
|--|---|---|---|---|---|
| 71. Written policy provides that all facility personnel are trained in implementing written emergency plans (3-JCRF-3B-09).  |   |   |   |   |   |
| 72. The facility has a fire alarm system and an automatic detection system approved by the authority having jurisdiction (3-JCRF-3B-10).   |   |   |   |   |   |
| 73. For programs providing mass-transport vehicles, written policy requires a safety inspection, at least annually, by qualified persons (3-JCRF-3B-11).                         |   |   |   |   |   |
| 74. A written plan provides for continuous facility operation in the event of employee work stoppage or other job action (3-JCRF-3B-12).   |   |   |   |   |   |
| 75. Written policy provides that there is a written set of disciplinary regulations governing juvenile rule violations (3-JCRF-3C-01).   |   |   |   |   |   |
| 76. Written policy provides that all program rules and regulations are posted in an obvious place or are readily accessible in a handbook (3-JCRF-3C-02).                        |   |   |   |   |   |
| 77. Written policy ensures that room restriction does not exceed 8 hours without review and administrative authorization (3-JCRF-3C-11).   |   |   |   |   |   |
| 78. Written policy ensures that the reasons for imposing restrictions or suspending privileges are discussed with the juvenile, who is given a chance to explain (3-JCRF-3C-12). |   |   |   |   |   |
| 79. Written policy provides that staff make visual and verbal contact with room-restricted juveniles at least every 30 minutes (3-JCRF-3C-13).                                   |   |   |   |   |   |
| 80. Written policy provides that staff record, date, and sign all instances of room and facility restriction and privilege suspension (3-JCRF-3C-14).                            |   |   |   |   |   |
| 81. Written policy ensures a juvenile's right to court access (3-JCRF-3D-01).  |   |   |   |   |   |
| 82. Written policy ensures and assists juvenile access to counsel and their authorized representatives (3-JCRF-3D-02).   |   |   |   |   |   |
| 83. Written policy provides that decisions about program access, work assignments, etc., disregard race, religion, national origin, sex (3-JCRF-3D-03).                          |   |   |   |   |   |
| 84. Written policy protects juveniles from corporal or other punishment that humiliates, abuses, or interrupts daily living functions (3-JCRF-3D-04).                            |   |   |   |   |   |
| 85. Written policy provides for the reporting of all instances of child abuse or neglect consistent with appropriate state or local laws (3-JCRF-3D-05).                         |   |   |   |   |   |
| 86. Written policy specifies the personal property that juveniles can keep in their possession and governs its control and safeguarding (3-JCRF-3D-06).                          |   |   |   |   |   |
| 87. Written policy provides for a grievance and appeal process (3-JCRF-3D-07).   |   |   |   |   |   |
| <b>D. Facility Services (Part IV of JCRF manual)</b>   | 1 | 2 | 3 | 4 | 5 |
| 88. A nutritionist, dietitian, or physician approves the menu and annually approves the nutritional value of the food served (3-JCRF-4A-02).                                     |   |   |   |   |   |
| 89. Written policy provides that food service staff plan menus that they largely follow, giving attention to appearance and palatability (3-JCRF-4A-03).                         |   |   |   |   |   |

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| 90. There is a single menu for staff and juveniles (3-JCRF-4A-04).   |   |   |   |   |   |
| 91. Written policy provides for special diets as prescribed by appropriate medical or dental personnel (3-JCRF-4A-05).   |   |   |   |   |   |
| 92. Written policy provides for special diets for juveniles whose religious beliefs require adherence to religious dietary laws (3-JCRF-4A-06).  |   |   |   |   |   |
| 93. Food service staff complies with all sanitation and health codes enacted by state or local authorities (3-JCRF-4A-07).   |   |   |   |   |   |
| 94. Written policy provides for weekly inspections of food service areas, sanitary food storage, and daily temperature checks (3-JCRF-4A-08).  |   |   |   |   |   |
| <b>INS Juvenile Shelter Care Standards Checklist</b>   | <b>Rating 1–5:</b><br>1=in compliance; 2=not in compliance;<br>3= exception noted; 4=staff information; 5=confirmed |   |   |   |   |
| <b>D. Facility Services—Cont. (Part IV of JCRF manual)</b>   | 1   | 2 | 3 | 4 | 5 |
| 95. Written policy provides that staff members supervise juveniles during meals (3-JCRF-4A-09).  |   |   |   |   |   |
| 96. Written policy requires that at least three meals (of which two are hot) be served at regular meal times during each 24-hour period, with no more than 14 hours between the evening meal and breakfast (3-JCRF-4A-10). |   |   |   |   |   |
| 97. The facility complies with the sanitation and health codes of the local and/or state jurisdiction (3-JCRF-4B-02).  |   |   |   |   |   |
| 98. Written policy provides for vermin and pest control and trash and garbage removal (3-JCRF-4B-03).  |   |   |   |   |   |
| 99. An independent, outside source has approved the institution’s potable water source and supply (3-JCRF-4B-04).  |   |   |   |   |   |
| 100. Written policy provides that a housekeeping and maintenance plan is in effect to ensure a clean facility that is in good repair (3-JCRF-4B-05).   |   |   |   |   |   |
| 101. Juveniles are given the opportunity to have clean clothing (3-JCRF-4B-06).  |   |   |   |   |   |
| 102. The facility provides for the thorough cleaning and disinfecting of juvenile personal clothing before storage or wear (3-JCRF-4B-07).   |   |   |   |   |   |
| 103. Written policy provides for the issue of suitable clean bedding and linen, including sheets, pillow cases, mattress, and blankets (3-JCRF-4B-08).   |   |   |   |   |   |
| 104. Written policy requires the ready availability to juveniles of articles necessary for proper personal hygiene (3-JCRF-4B-09).   |   |   |   |   |   |
| 105. Written policy provides that the facility has a formal agreement with a designated health authority to provide health care services (3-JCRF-4C-01).   |   |   |   |   |   |
| 106. Written policy provides for access to health care and for a system for processing complaints regarding health care (3-JCRF-4C-02).  |   |   |   |   |   |

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| 107. Appropriate state and federal licensure and other requirements/restrictions apply to providers of health care services to juveniles (3-JCRF-4C-03).      |   |   |   |   |   |
| 108. Written policy provides that treatment by nontraditional health care personnel is performed under authorized order or standing (3-JCRF-4C-04).           |   |   |   |   |   |
| 109. Written policy specifies the provision of mental health services to juveniles (3-JCRF-4C-05).  |   |   |   |   |   |
| 110. A suicide prevention/intervention program is reviewed and approved by a qualified medical or mental health professional (3-JCRF-4C-06).                  |   |   |   |   |   |
| 111. When facilities do not have full-time, qualified, health personnel, a health-trained staff member coordinates health services delivery (3-JCRF-4C-07).   |   |   |   |   |   |
| 112. Written policy provides that the program's health care plan adheres to state and federal rules for storage and distribution of medicines (3-JCRF-4C-08). |   |   |   |   |   |
| 113. Written policy requires medical, dental, and mental health screening by qualified health care personnel on all juveniles (3-JCRF-4C-09).                 |   |   |   |   |   |
| 114. Written policy provides for the collection, recording, and review of health appraisal data to identify each juvenile's health care needs (3-JCRF-4C-11). |   |   |   |   |   |
| 115. Written policy provides for medical examination of any employee or juvenile suspected of having a communicable disease (3-JCRF-4C-12).                   |   |   |   |   |   |
| 116. Dental care is provided to each juvenile under the direction and supervision of a dentist licensed in the state (3-JCRF-4C-13).                          |   |   |   |   |   |
| 117. Written policy provides for 24-hour emergency medical, dental, and mental health care services as outlined in a detailed written plan (3-JCRF-4C-14).    |   |   |   |   |   |
| 118. Written policy provides that careworker staff and other personnel are trained to respond to health emergencies within 4 minutes (3-JCRF-4C-15).          |   |   |   |   |   |
| <b>INS Juvenile Shelter Care Standards Checklist</b>  | <b>Rating 1–5:</b><br>1=in compliance; 2=not in compliance;<br>3= exception noted; 4=staff information; 5=confirmed |   |   |   |   |
| <b>D. Facility Services—Cont. (Part IV of JCRF manual)</b>  | 1   | 2 | 3 | 4 | 5 |
| 119. The facility has authoritatively approved first aid equipment available at all times (3-JCRF-4C-16).   |   |   |   |   |   |
| 120. Written policy provides that persons injured in an incident receive immediate medical examination and treatment (3-JCRF-4C-17).                          |   |   |   |   |   |
| 121. Written policy addresses the management of serious and infectious diseases (3-JCRF-4C-21).   |   |   |   |   |   |
| 122. Written policy specifies approved employee actions with regard to juveniles diagnosed with HIV (3-JCRF-4C-22).   |   |   |   |   |   |
| 123. Written policy prohibits the use of juveniles for medical, pharmaceutical, or cosmetic   |   |   |   |   |   |

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| experiments (3-JCRF-4C-26).  |          |          |          |          |          |
| 124. Written policy provides that juveniles' parents/guardians are promptly notified in case of serious illness, surgery, injury, or death (3-JCRF-4C-27).       |          |          |          |          |          |
| 125. Juveniles' health record files contain the required forms and information (3-JCRF-4C-28).   |          |          |          |          |          |
| 126. For transferred juveniles, summaries or copies of the medical history record are forwarded to the receiving facility prior to or at arrival (3-JCRF-4C-29). |          |          |          |          |          |
| <b>E. Juvenile Services (Part V of JCRF Manual)</b>  | <b>1</b> | <b>2</b> | <b>3</b> | <b>4</b> | <b>5</b> |
| 127. The facility has clearly defined written policies, procedures, and practices governing admission (3-JCRF-5A-01).  |          |          |          |          |          |
| 128. The agency records basic information, as outlined, on each juvenile to be admitted (3-JCRF-5A-03).  |          |          |          |          |          |
| 129. Written policy provides that the facility inform a referring facility as to why a prospective juvenile is not accepted into the program (3-JCRF-5A-05).     |          |          |          |          |          |
| 130. Upon admission, staff discuss with the juvenile program goals, available services, rules, and possible disciplinary actions (3-JCRF-5A-07).                 |          |          |          |          |          |
| 131. Written policy provides that the facility not discriminate on the basis of race, religion, national origin, gender, or disability (3-JCRF-5A-09).           |          |          |          |          |          |
| 132. The facility provides or arranges for a variety of services, such as food, education, counseling, recreation, transportation, etc. (3-JCRF-5A-12).          |          |          |          |          |          |
| 133. Written policy provides that new juveniles receive written orientation materials and/or translations in their own languages (3-JCRF-5A-13).                 |          |          |          |          |          |
| 134. Where a language or literacy problem can cause misunderstanding of rules and reg., staff must provide assistance to the juvenile (3-JCRF-5B-08).            |          |          |          |          |          |
| 135. Written policy provides that each juvenile is assigned a facility staff member who meets with and counsels him or her (3-JCRF-5C-02).                       |          |          |          |          |          |
| 136. Written policy provides that staff members are available to counsel juveniles at their request, with provision for emergencies (3-JCRF-5C-03).              |          |          |          |          |          |
| 137. Written policy provides for coordination and continuity between educational, vocational, and work programs (3-JCRF-5D-01).                                  |          |          |          |          |          |
| 138. Special education programs are available to meet the needs of special education students as defined in public law (3-JCRF-5D-02).                           |          |          |          |          |          |
| 139. Written policy shows compliance with laws pertaining to individual special education plans before juveniles are placed or removed (3-JCRF-5D-03).           |          |          |          |          |          |
| 140. Written policy provides that educational, vocational, work, and treatment program credits are accepted by community agencies (3-JCRF-5D-04).                |          |          |          |          |          |
| 141. Written policy provides that the use of work does not interfere with educational and treatment programs (3-JCRF-5D-05).                                     |          |          |          |          |          |
| 142. Written policy provides for indoor and outdoor recreational and leisure time needs of   |          |          |          |          |          |

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| juveniles (3-JCRF-5E-01).  |  |   |   |   |   |   |
| <b>INS Juvenile Shelter Care Standards Checklist</b>   |  | <b>Rating 1–5:</b><br>1=in compliance; 2=not in compliance;<br>3= exception noted; 4=staff information; 5=confirmed |   |   |   |   |
| <b>E. Juvenile Services—Cont. (Part V of JCRF manual)</b>  |  | 1   | 2 | 3 | 4 | 5 |
| 143. Written policy provides that juveniles have the opportunity to participate in practices of their religious faiths (3-JCRF-5F-01).                       |  |   |   |   |   |   |
| 144. Written policy provides that indigent juveniles receive a specified postage allowance to maintain community ties (3-JCRF-5G-01).                        |  |   |   |   |   |   |
| 145. Written policy governs juvenile access to publications (3-JCRF-5G-02).  |  |   |   |   |   |   |
| 146. Written policy provides that juveniles' mail, both incoming and outgoing, may be opened and inspected for contraband (3-JCRF-5G-03).                    |  |   |   |   |   |   |
| 147. Written policy provides for the forwarding of first class letters and packages after transfer or release (3-JCRF-5G-04).                                |  |   |   |   |   |   |
| 148. Written policy provides for juvenile access to a telephone to make and receive personal calls (3-JCRF-5G-06).   |  |   |   |   |   |   |
| 149. Written policy allows juveniles to receive approved visitors, except where a threat to juvenile safety or program security is evidenced (3-JCRF-5G-06). |  |   |   |   |   |   |
| 150. Written policy provides for special visits (3-JCRF-5G-07).  |  |   |   |   |   |   |
| 151. Written procedures for releasing juveniles include several verification processes and other checks (3-JDF-5H-02).                                       |  |   |   |   |   |   |
| 152. Written policy provides for and governs escorted and unescorted day leaves into the community (3-JDF-5H-07).  |  |   |   |   |   |   |

**Special Instructions for Supplemental Form G-324b  
Service Contract Facility Inspection Checklist  
for INS Juvenile Shelter Care Facilities**



This packet contains Form G-324a, the “Service Contract Facility Inspection Report,” which includes instructions for completing the report, a checklist for inspecting adult facilities, an inspection certification page, and Supplemental Form G-324b (4/98).

When conducting inspections of juvenile residential shelter facilities, please replace page 2 of Form G-324a—the checklist used for inspecting adult facilities—with Supplemental Form G-324b. These attached pages comprise the itemized checklist to be used for evaluating juvenile shelter care facilities.

## Minimum Standards for Immigration and Naturalization Service Juvenile Shelter Care Facilities<sup>3</sup>

### Part I. Administration and Management Section A: General Administration

**Principle:** A written body of policy and procedures establishes the facility’s goals, objectives, and standard operating procedures and establishes a system of regular review.

#### Qualifications

##### 3-JCRF-1A-06 (Ref. 2-6005)

1. **Written policy, procedure, and practice provide that the facility and its programs are managed by a single administrative officer.**

*Comment:* None.

##### 3-JCRF-1A-07 (Ref. 2-6052)

2. **The qualifications for the position of facility administrator include, at a minimum, a bachelor’s degree in an appropriate discipline and demonstrated administrative ability and leadership.** The degree requirement may be satisfied by completing a career development program that includes work-related experience, training, or college credits at a level of achievement equivalent to the bachelor’s degree.

*Comment:* Establishing high qualifications ensures that only experienced individuals are recruited and employed. It is the facility’s responsibility to see that potential administrators receive the required education.

#### Policy and Procedure Manuals

##### 3-JCRF-1A-13 (Ref. New)

3. **Written policy, procedure, and practice provide that new or revised policies and procedures are disseminated to designated staff and volunteers.**

*Comment:* Dissemination of policies and procedures increases the effectiveness of the facility’s

communication system.

## **Channels of Communication**

### **3-JCRF-1A-14 (Ref. New)**

- 4. Written policy, procedure, and practice provide for regular meetings, at least monthly, between the administrator and key staff members.**

*Comment:* Regular channels of communication are necessary for delegating authority, assigning responsibility, supervising work, and coordinating efforts.

## **Firearms**

### **3-JCRF-1A-22 (Ref. 2-6208)**

- 5. Written policy, procedure, and practice provide that firearms are not permitted in the facility.**

*Comment:* None.

## **Section B: Fiscal Management**

**Principle:** A written body of policy and procedures establishes the facility's fiscal planning, budgeting, and accounting procedures and provides a system of regular review.

## **Fiscal Control**

### **3-JCRF-1B-02 (Ref. 2-6033)**

- 6. The facility has written fiscal policies and procedures adopted by the governing authority, including, at a minimum, the following: internal controls, petty cash, bonding, signature control on checks, juvenile funds, and employee expense reimbursements.**

*Comment:* None.

## **Juvenile Funds**

### **3-JCRF-1B-17 (Ref. New)**

- 7. Written policy, procedure, and practice provide that any financial transactions permitted between juveniles, juveniles and staff, or juveniles and volunteers must be approved by the facility administrator.**

*Comment:* Uncontrolled financial transactions between juveniles and juveniles and staff can foster illegal activities.

## **Section C: Personnel**

**Principle:** A written body of policy and procedures establishes the facility's staffing, recruiting, promotion, benefits, and review procedures for employees.

## **Sexual Harassment**

### 3-JCRF-1C-04 (Ref. New)

#### **8. Written policy, procedure, and practice prohibit sexual harassment.**

*Comment:* Facility administrators should have as their objective the creation of a workplace that is free from all forms of discrimination, including sexual harassment. Policy clearly indicates that sexual harassment, either explicit or implicit, is strictly prohibited. Employees and agents of the facility, including volunteers, contractors, and vendors, must be advised that they are subject to disciplinary action, including dismissal and termination of contracts and/or services, if found guilty of sexual harassment charges brought by employees or juveniles.

## Drug-free Workplace

### 3-JCRF-1C-05 (Ref. 2-6055-1)

#### **9. There is written policy and procedure that specifies support for a drug-free workplace for all employees.** This policy, which is reviewed annually, includes, at a minimum, the following:

- prohibition of the use of illegal drugs;
- prohibition of possession of any illegal drug, except in the performance of official duties;
- procedures to be used to ensure compliance;
- opportunities available for treatment and/or counseling for drug abuse; and
- penalties for violation of the policy.

*Comment:* None.

## Staffing Requirements

### 3-JCRF-1C-06 (Ref. 2-6041)

#### **10. Written policy, procedure, and practice provide that there are written job descriptions and job qualifications for all positions in the facility.** Each job description includes, at a minimum, the following: job title, responsibilities of the position, required minimum experience, and education.

*Comment:* The job description can be a useful tool in evaluating employee performance. It can also provide the employee with clarification of the position's duties and responsibilities.

## Criminal Record Check

### 3-JCRF-1C-10 (Ref. New)

#### **11. A criminal record check is conducted on all new employees in accordance with state and federal statutes.**

*Comment:* The facility administrator should know of any criminal conviction that could directly affect an employee's job performance.

## Physical Examination

### 3-JCRF-1C-11 (Ref. New)

#### **12. Written policy, procedure, and practice provide that employees who work with juveniles receive a physical examination.**

*Comment:* Staff whose responsibilities include supervision or regular direct contact with juveniles must have physical examinations to protect their health and ensure that they can carry out their assignments effectively. The basic health status of all employees should be evaluated against the specific requirements of their assignments. Physical examination and screening procedures may be established by the appropriate medical authority, if there are such applicable laws and regulations.

## Confidentiality of Information

### 3-JCRF-1C-17 (Ref. New)

**13. Written policy, procedure, and practice provide that employees, consultants, and contract personnel who work with juveniles are informed in writing about the facility's policies on confidentiality of information and agree in writing to abide by them.**

*Comment:* The written policies should specify what types of information are confidential between worker and juvenile, what types may be shared with other facility personnel, and what types can be communicated to persons outside the facility.

## Section D: Training and Staff Development

**Principle:** A written body of policy and procedure establishes the facility's training and staff development programs, including training requirements for all categories of personnel.

## Orientation/Training

### 3-JCRF-1D-03 (Ref. 2-6057)

**14. The facility provides initial orientation for all new employees during their first week of employment.** This orientation/training includes, at a minimum, the following: a historical perspective of the facility, facility goals and objectives, program rules and regulations, job responsibilities, personnel policies, juvenile supervision, and report preparation. The employee signs and dates a statement indicating that orientation has been received.

*Comment:* Supervisory personnel should provide orientation for all newly employed personnel to familiarize them with facility policies and procedures.

## Training Resources

### 3-JCRF-1D-05 (Ref. 2-6059)

**15. Written policy, procedure, and practice provide that all training programs are presented by persons who are qualified in the areas in which they conduct training.**

*Comment:* None.

## Administrative Staff

### 3-JCRF-1D-09 (Ref. 2-6063)

**16. Written policy, procedure, and practice provide that all administrative, managerial, and professional specialist staff receive 40 hours of training in addition to orientation training during**

**the first year of employment and 40 hours of training each year thereafter.** At a minimum, this training covers the following areas: general management, labor law, employee-management relations, the juvenile justice system, and relationships with other service agencies.

*Comment:* None.

## Juvenile Careworkers

### 3-JCRF-1D-10 (Ref. 2-6062)

**17. Written policy, procedure, and practice provide that all juvenile careworkers receive an additional 120 hours of training during their first year of employment and 40 hours of training each subsequent year.** At a minimum, this training covers the following areas:

- signs of child abuse;
- security procedures;
- supervision of juveniles;
- signs of suicide risks;
- suicide precautions;
- use-of-force regulations and restraint techniques;
- report writing;
- juvenile rules and regulations;
- rights and responsibilities of juveniles;
- fire and emergency procedures;
- safety procedures;
- key control;
- interpersonal relations;
- social/cultural lifestyles of the juvenile population;
- communication skills;
- first aid/cardiopulmonary resuscitation (CPR);
- counseling techniques;
- crisis intervention;
- legal issues; and
- sexual harassment.

*Comment:* Since the duties of juvenile careworkers frequently involve most facility operations, their training should be comprehensive. Ongoing training during subsequent years of employment enables employees to sharpen skills and keep abreast of changes in operational procedures.

## Support Staff

### 3-JCRF-1D-11 (Ref. 2-6063-1)

**18. Written policy, procedure, and practice provide that all support employees who have regular or daily contact with juveniles receive 40 hours of training, in addition to orientation training, during their first year of employment and 40 hours of training each year thereafter.**

*Comment:* Food service employees, industrial supervisors, and other support personnel whose work requires day-to-day contact with juveniles should receive basic training in juvenile supervision and security, as well as specialized training in their field as it relates to the facility setting. These individuals should be familiar with the

policies and procedures of the facility, along with the basic rules of juvenile supervision and security. Ongoing training during subsequent years of employment enables employees to sharpen skills and keep abreast of changes in operational procedures.

## Part-time Staff and Volunteers

### 3-JCRF-1D-13 (Ref. 2-6063-3)

**19. All part-time staff, volunteers, and contract personnel receive formal orientation appropriate to their assignments and additional training as needed.**

*Comment:* Part-time staff should receive orientation to facility rules and security and operational procedures.

## Section E: Juvenile Records

**Principle:** A written body of policy and procedures establishes the facility's management of case records, including security, right of access, and release of information.

### Juvenile Records

#### 3-JCRF-1E-01 (Ref. 2-6076)

**20. Written policy, procedure, and practice govern case record management, including, at a minimum, the following areas: the establishment, use, and content of juvenile records; right to privacy; secure placement and preservation of records; and schedule for retiring or destroying inactive records.** The policies and procedures are reviewed annually.

*Comment:* An orderly and timely system for recording, maintaining, and using data about juveniles increases the efficiency and effectiveness of program and service delivery and the transfer of information to the courts and release authorities. The policy should cover juveniles' access to their files.

According to the *Flores* Agreement, Minimum Standards for Licensed Programs (Exhibit 1-F), the program maintains adequate records and makes regular reports as required by the INS that permit the INS to monitor and enforce this order and other requirements and standards, as determined to be in the juveniles' best interests.

#### 3-JCRF-1E-02 (Ref. 2-6077)

**21. Written policy, procedure, and practice provide that a record is maintained for each juvenile and includes, at a minimum, the following information:**

- initial intake information form;
- case information from referral source, if available;
- case history/social history;
- medical record, when available;
- individual plan or program;
- signed release of information forms;
- evaluation and progress reports;
- current employment data;
- program rules and disciplinary policy, signed by juvenile;

- documented legal authority to accept juvenile;
- grievance and disciplinary record;
- referrals to other agencies; and
- final discharge report.

*Comment:* The record is a composite report including background information, ongoing progress reports, and current information. Any staff member should be able to obtain clear and concise knowledge about the juvenile and his or her progress through the facility record.

### 3-JCRF-1E-03 (Ref. 2-6080)

**22. Written policy, procedure, and practice provide for the auditing of juvenile records at least monthly.**

*Comment:* All records must be reviewed on a regular basis by staff to ensure that appropriate and accurate material is being entered. Policy must designate the persons who may have access to these records.

### 3-JCRF-1E-05 (Ref. 2-6079)

**23. Written policy, procedure, and practice provide that appropriate safeguards exist to minimize the possibility of theft, loss, or destruction of records.**

*Comment:* All records should be maintained in a secure location, preferably in an office area that has 24-hour staff coverage. Theft, loss, or destruction of records represents a potentially serious setback to the program and often to the juvenile.

## Transfer of Records

### 3-JCRF-1E-06 (Ref. New)

**24. Written policy, procedure, and practice provide that an updated case file for any juvenile transferred from one facility to another is transferred simultaneously or, at the latest, within 72 hours.**

*Comment:* Continuity of programming for juveniles transferred from other facilities requires that staff have the benefit of a complete, cumulative case record as soon as possible.

## Confidentiality

### 3-JCRF-1E-07 (Ref. 2-6081)

**25. Written policy, procedure, and practice provide that records are safeguarded from unauthorized and improper disclosure.** Manual records are marked “confidential.” Written policy and procedure provide that when any part of the information system is computerized, security ensures confidentiality.

*Comment:* A juvenile’s constitutional right to privacy can be violated if records are improperly disseminated. The facility should establish procedures to limit access to records to persons and public agencies that have both a “need to know” and a “right to know” and can demonstrate that access to such information is necessary for juvenile justice purposes. Written guidelines should regulate juvenile access to records.

## Juvenile Participation

**3-JCRF-1F-09** (Ref. New)

**26. Written policy, procedure, and practice govern the voluntary participation of juveniles in nonmedical, nonpharmaceutical, and noncosmetic research programs.**

*Comment:* None.

## Section G: Citizen Involvement and Volunteers

**Principle:** A written body of policy and procedure establishes the screening, training, and operating procedures for a citizen involvement and volunteer program.

### Program Coordination

**3-JCRF-1G-01** (Ref. 2-6212)

**27. There is a staff member who is responsible for the supervision of a citizen involvement and volunteer service program for the benefit of juveniles.**

*Comment:* A citizen involvement and volunteer service program can generate a wide variety of services for juveniles during confinement and after release. For example, information on referrals to release programs and recreational and cultural activities in the community. The staff member responsible for the program may be full-time or part-time, and the positions may be filled by volunteer or contract personnel. The responsible person should have or receive appropriate training.

### Screening and Selection

**3-JCRF-1G-05** (Ref. New)

**28. Volunteers agree in writing to abide by facility policies, particularly those relating to the security and confidentiality of information.**

*Comment:* Confidentiality of records and of other privileged information is critical. The facility should develop written policies and procedures specifying that volunteers respect all facility policies.

### Orientation and Training

**3-JCRF-1G-07** (Ref. New)

**29. Written policy, procedure, and practice provide that each volunteer completes an appropriate, documented orientation and/or training program prior to assignment.**

*Comment:* None.



## Offer of Professional Services

3-JCRF-1G-08 (Ref. 2-6213)

**30. Written policy specifies that volunteers may perform professional services only when they are certified or licensed to do so.**

*Comment:* None.

## Part II. Physical Plant

### Section A: Building and Safety Codes

**Principle:** Compliance with professional zoning, building, and fire safety codes helps to ensure the safety of all persons within the facility.

#### Building Codes

3-JCRF-2A-01 (Ref. 2-6086)

##### Mandatory

**31. The facility conforms to all applicable state and local building codes.**

*Comment:* Often a state or local jurisdiction will license a residential facility, thereby indicating its compliance with all building codes. In those cases when a license is not issued, letters or certificates of compliance are acceptable. If the facility is not subject to local (city and/or county) building codes, state codes will be applied to the facility.

#### Fire Safety Codes

3-JCRF-2A-03 (Ref. 2-6118)

##### Mandatory

**32. Exits in the facility are in compliance with state or local fire authorities or the authority having jurisdiction.**

*Comment:* Battery-operated electric lights, portable lamps, or lanterns should be used for primary illumination of exits. Electric battery-operated lighting may be used as an emergency source where normal lighting has failed, as defined by the current edition of the National Fire Protection Association's *Life Safety Code*.

### Section B: Size, Location, and Organization

**Principle:** The facility size and design encourage flexibility, creativity, and innovation in meeting the concerns for effective programming, safety, and quality of life.

#### Rated Capacity

3-JCRF-2B-03 (Ref. New)

**33. The number of juveniles does not exceed the facility's rated bed capacity.**

*Comment:* Rated bed capacity is considered to be the original design, plus or minus capacity changes resulting from building additions, reductions, or revisions.

## Section C: Juvenile Housing

**Principle:** Juvenile housing areas are the foundation of facility living and must promote the safety and well-being of both juveniles and staff. The facility must approximate regular home and living conditions in its appearance.

### Sleeping Areas

#### 3-JCRF-2C-01 (Ref. New)

**34. Each sleeping room has, at a minimum, the following:**

- some degree of privacy for the juvenile;
- 35 square feet of unencumbered space per occupant; sleeping area partitions are required if more than four people are in one sleeping area;
- access to toilets and a wash basin with hot and cold running water 24 hours a day;
- a bed, mattress, pillow, desk, chair or stool, and adequate storage space;
- natural light; and
- temperatures that are appropriate to summer and winter comfort zones.

“Unencumbered space” is usable space that is not encumbered by furnishings or fixtures. At least one dimension of the unencumbered space is no less than 7 feet. All fixtures must be in operational position.

*Comment:* Natural lighting should be available either by room windows to the exterior or from a source within 20 feet of the room. The bed should be elevated from the floor and have a clean, covered mattress with blankets, as needed.

According to the *Flores* Agreement (Exhibit 1-A.12), a reasonable right to privacy includes the right of a juvenile to (a) wear his or her own clothes, when available; (b) retain a private space in the residential facility, group, or foster home for the storage of personal belongings; (c) talk privately on the phone, as permitted by house rules and regulations; (d) visit privately with guests, as permitted by the house rules and regulations; and (e) receive and send uncensored mail unless there is a reasonable belief that the mail contains contraband.

### Dayrooms

#### 3-JCRF-2C-02 (Ref. New)

**35. Living rooms with space for varied activities are available.**

*Comment:* None.

### Furnishings

### 3-JCRF-2C-03 (Ref. 2-6097)

**36. Written policy, procedure, and practice provide that the facility permits juveniles to decorate their living and sleeping quarters with personal possessions.** Regulations concerning the rules are available to all juveniles and staff. The rules are reviewed annually and revised, if indicated.

*Comment:* None.

## Toilets

### 3-JCRF-2C-04 (Ref. 2-6092)

**37. The facility has, at a minimum, one operable toilet for every eight juveniles.** Urinals may be substituted for up to one-half of the toilets in all-male facilities.

*Comment:* None.

## Showers

### 3-JCRF-2C-05 (Ref. 2-6094)

**38. The facility has, at a minimum, one operable shower or bathing facility with hot and cold running water for every eight juveniles.** Water temperatures are thermostatically controlled.

*Comment:* None.

## Wash Basins

### 3-JCRF-2C-06 (Ref. 2-6093)

**39. The facility has, at a minimum, one operable wash basin with hot and cold running water for every eight juveniles.**

*Comment:* None.

## Housing for Disabled Juveniles

### 3-JCRF-2C-08 (Ref. New)

**40. Written policy, procedure, and practice provide that juveniles with disabilities are housed in a manner that provides for their safety and security.** Appropriate facility programs and activities are accessible to disabled juveniles in the facility according to applicable law.

*Comment:* Disabled juveniles should not be isolated because of their conditions.

## Section D: Environmental Conditions

**Principle:** Environmental conditions significantly influence the overall effectiveness of facility operations. Standards for lighting, air quality, temperature, and noise levels are designed to preserve the health and well-being of juveniles and staff members.

## Housing Area

### 3-JCRF-2D-01 (Ref. 2-6089)

- 41. Written policy, procedure, and practice provide that all sleeping quarters in the facility are well-lighted and properly ventilated.** Natural lighting should be provided wherever possible. Documentation shall be provided by an independent, qualified source that lighting is at least 20 footcandles at desk level and air circulation is at least 15 cubic feet of outside or recirculated filtered air per minute per person.

*Comment:* The facility should maintain strict adherence to local health codes requiring proper lighting and ventilation.

## Heating and Cooling

### 3-JCRF-2D-02 (Ref. New)

- 42. Temperatures in indoor living and work areas are appropriate to summer and winter comfort zones.**

*Comment:* Temperature and humidity should be capable of being mechanically raised or lowered to an acceptable comfort level in keeping with the general community standards.

## Section E: Program and Service Areas

**Principle:** Adequate space must be provided for the various program and service functions conducted within the facility. Spatial requirements are best determined by careful assessment of how, when, and how many juveniles use a specific area.

## Program Area

### 3-JCRF-2E-01 (Ref. 2-6099)

- 43. Adequate space and furnishings to accommodate activities, such as group meetings of the juveniles, are provided in the facility.**

*Comment:* A room(s) of sufficient size to accommodate group meetings is a necessity. The room(s) should be pleasantly and comfortably furnished.

**3-JCRF-2E-02** (Ref. 2-6098)

**44. Adequate private counseling space is provided in the facility.**

*Comment:* Each facility must have adequately furnished space available to conduct private interviews and counseling sessions.

**Visiting**

**3-JCRF-2E-03** (Ref. 2-6100)

**45. Written policy, procedure, and practice provide for adequate and appropriate areas for visitation and for recreation programs.**

*Comment:* An important part of the residential program is providing for relatives and friends to visit the juveniles at the facility.

**Dining**

**3-JCRF-2E-04** (Ref. New)

**46. Adequate dining space is provided for juveniles.**

*Comment:* None.

**Food Service**

**3-JCRF-2E-05** (Ref. 2-6128)

**47. When the facility has a kitchen, the kitchen, dining, and food storage areas are properly ventilated, properly furnished, and clean.**

*Comment:* None.

**Housekeeping**

**3-JCRF-2E-07** (Ref. New)

**48. Adequate space is provided for janitorial supplies, which is accessible to the living and activity areas.**

*Comment:* None.

**Clothing and Supplies**

**3-JCRF-2E-08** (Ref. New)

**49. Space is provided in the facility to store and issue clothing, bedding, cleaning supplies, and other items required for daily operations.**

*Comment:* None.

**Personal Property**

**3-JCRF-2E-09** (Ref. New)

**50. Adequate space is provided for storing the personal property of juveniles.**

*Comment:* None.

## **Section G: Safety/Security**

**Principle:** The physical plant supports the safe and secure operation of the facility.

### **Juvenile Safety**

#### **3-JCRF-2G-01 (Ref. New)**

**51. The facility is controlled by appropriate means to provide that juveniles remain safely within the facility and to prevent access by the general public without proper authorization.**

*Comment:* The means chosen to ensure controlled access should reflect the facility's needs based on its size and the degree of security required.

## **Part III. Facility Operations**

### **Section A: Supervision**

**Principle:** The facility uses a combination of supervision, inspection, accountability, and policies and procedures to promote safe and orderly operations.

## Use of Force

### 3-JCRF-3A-02 (Ref. 2-6194)

#### Mandatory

- 52. Written policy, procedure, and practice limit the use of physical force to instances of self-protection, protection of the juvenile or others, prevention of property damage, and prevention of escape, and are in accordance with appropriate statutory authority. In no event is physical force justifiable as punishment. A written report is prepared following all uses of force and is submitted to the facility administrator.**

*Comment:* It is important that records of all use-of-force instances are maintained.

## Juvenile Careworkers

### 3-JCRF-3A-03 (Ref. 2-6167)

- 53. Written policy, procedure, and practice provide that there is at least one staff person on the premises 24 hours a day who is readily available and responsive to juvenile needs.**

*Comment:* None.

### 3-JCRF-3A-04 (Ref. 2-6166)

- 54. Written policy, procedure, and practice provide that the staffing pattern concentrates staff when most juveniles are in the facility.**

*Comment:* Many juveniles who work or attend school during the day are in the facility during the late afternoon and evening. A large number of staff should be available during those hours.



**3-JCRF-3A-05** (Ref. 2-6193)

**55. Written policy, procedure, and practice provide that no juvenile or group of juveniles is in a position of control or authority over other juveniles.**

*Comment:* Under no circumstances should juveniles be used or allowed to control others. There are instances when a supervised system of advanced responsibilities for juveniles may be used.

**Permanent Log**

**3-JCRF-3A-06** (Ref. New)

**56. Written policy, procedure, and practice require that juvenile careworker staff maintain a permanent log and prepare shift reports that record routine information, emergency situations, and unusual incidents that occur in the facility.**

*Comment:* Adequate supervision of juveniles requires an accurate written reporting system.

**Accountability**

**3-JCRF-3A-08** (Ref. 2-6206)

**57. Written policy, procedure, and practice provide for the detection and reporting of absconders.**

*Comment:* Because program participants frequently are persons legally in a custody status, any unauthorized absence or absconding should be considered an absence without leave. The procedure should specify prompt determination of the juvenile's absence and timely notification to the facility with jurisdiction over the juvenile.

## Juvenile Movement

### 3-JCRF-3A-09 (Ref. 2-6205)

**58. Written policy, procedure, and practice provide that staff monitor the movement of juveniles into and out of the facility.**

*Comment:* The monitoring of juveniles' movement, particularly during the evening and night hours, serves as a protection for juveniles, staff, and the public. Therefore, periodic scrutiny of movement into and out of the facility is necessary.

## Sleeping Rooms

### 3-JCRF-3A-10 (Ref. 2-6103)

**59. Written policy, procedure, and practice provide that juveniles and adults do not share sleeping rooms.**

*Comment:* No children over the age of one, including those of group home parents, should share a sleeping room with an adult. In emergencies, such as sickness or severe emotional disturbance, the program director may authorize exceptions.

### 3-JCRF-3A-11 (Ref. 2-6102)

**60. Written policy, procedure, and practice provide that male and female juveniles do not occupy the same sleeping rooms.**

*Comment:* None.

## Control of Contraband

### 3-JCRF-3A-12 (Ref. 2-6204)

**61. Written policy, procedure, and practice provide for searches to control contraband and its disposition at a level commensurate with security needs.** This policy is made available to staff and juveniles. Policy and procedure are reviewed at least annually and updated, if necessary. Body cavity searches are not allowed in the facility.

*Comment:* The facility's search plans and procedures may include unannounced and irregularly timed searches of rooms and juveniles.

## Tools, Equipment, and Keys

### 3-JCRF-3A-13 (Ref. New)

**62. Written policy, procedure, and practice govern the control and use of tools, equipment, and keys.**

*Comment:* Tools and utensils should be used in accordance with a prescribed system.

## Section B: Safety and Emergency Procedures

**Principle:** The facility adheres to all applicable safety and fire codes and has the necessary equipment and procedures in place in the event of a major emergency.

## Fire Safety

**3-JCRF-3B-01** (Ref. 2-6111)

**Mandatory**

**63. The facility complies with the regulations of the state or local fire safety authority, whichever has primary jurisdiction over the facility.**

*Comment:* Local and state fire codes must be strictly followed to ensure the safety of juveniles and staff. Reports of periodic inspections and actions taken should be maintained.

**3-JCRF-3B-02** (Ref. 2-6112)

**Mandatory**

**64. Written policy, procedure, and practice specify fire prevention regulations and practices to ensure the safety of staff, juveniles, and visitors.** These include but are not limited to the following:

- provision for an adequate fire protection service;
- a system of fire inspections and testing of equipment at least quarterly;
- an annual inspection by local or state fire officials or other qualified person(s); and

- availability of fire protection equipment at appropriate locations throughout the facility.

*Comment:* Facility personnel should plan and execute all reasonable procedures for the prevention and prompt control of fire to ensure the safety of all staff, juveniles, and visitors.

**Flammable, Toxic, and Caustic Materials**

**3-JCRF-3B-03** (Ref. New)

## Mandatory

**65. Written policy, procedure, and practice provide that the specifications for the selection and purchase of facility furnishings meet fire safety performance requirements.**

*Comment:* Furnishings, mattresses, cushions, or other items of foamed plastics or rubber (e.g., polyurethane, polystyrene) can pose a severe hazard due to high smoke production, rapid burning once ignited, and high heat release. Such materials should receive careful fire safety evaluation before purchase or use, with consideration given to the product's flammability and toxicity characteristics. Facility furnishings include draperies, curtains, furniture, wastebaskets, decorations, and similar materials that can burn. Furnishings apply to all living quarters. The standard requires that specifications be known, if available, at the time of selection.

## JCRF-3B-04 (Ref. New)

### Mandatory

**66. Written policy, procedure, and practice provide that where smoking is permitted, noncombustible receptacles for smoking materials and separate containers for other combustible refuse are accessible at locations throughout living quarters.** Special containers are provided for flammable liquids and for rags used with flammable liquids. All receptacles and containers are emptied and cleaned daily.

*Comment:* None.

## 3-JCRF-3B-05 (Ref. New)

### Mandatory

**67. Written policy, procedure, and practice govern the control and use of all flammable, toxic, and caustic materials.**

*Comment:* None.

## Emergency Plans

### 3-JCRF-3B-06 (Ref. 2-6116)

#### Mandatory

**68. The facility has a written evacuation plan prepared in the event of a fire or major emergency that is certified by an independent, outside inspector trained in the application of national fire safety codes. The plan is reviewed annually, updated if necessary, and reissued to the local fire jurisdiction. The plan includes the following:**

- location of building/room floor plan;
  - use of exit signs and directional arrows for traffic flow;
  - location of publicly posted plan; and
- monthly drills in all facility locations.

*Comment:* The evacuation plan should also specify routes of evacuation, subsequent disposition and temporary housing of juveniles, and provision for medical care or hospital transportation for injured juveniles and/or staff. Fire drills should include evacuation of all juveniles. Actual evacuation during drills is not required, although staff supervising such juveniles should be required to perform their roles.

#### Fire Drills

### 3-JCRF-3B-07 (Ref. New)

#### Mandatory

**69. Written policy, procedure, and practice provide that fire drills are conducted at least monthly.**

*Comment:* None.

### 3-JCRF-3B-08 (Ref. 2-6114)

#### Mandatory

**70. Written emergency plans are disseminated to appropriate local authorities.** Directions to and location of exits, fire extinguishers, first aid equipment, and other emergency equipment are posted in the facility.

*Comment:* Dissemination of these plans to local authorities, such as law enforcement, fire department, state police, civil defense, etc., will keep them informed of their roles in the event of an emergency. The emergency plans should be posted conspicuously and be readily available to juveniles and employees to assist them in an emergency, yet attached so as to prevent removal. The emergency plan should include directions to and location of exits, fire extinguishers, first aid equipment, and other emergency equipment or supplies.

### 3-JCRF-3B-09 (Ref. 2-6115)

#### Mandatory

**71. Written policy, procedure, and practice provide that all facility personnel are trained in the implementation of written emergency plans.**

*Comment:* Since the staff must be able to properly execute the plans, a review of the emergency plans should be an essential element of personnel orientation and in-service training.

## Fire Alarm System

### 3-JCRF-3B-10 (Ref. 2-6117)

#### Mandatory

**72. The facility has a fire alarm system and an automatic detection system that is approved by the authority having jurisdiction.** All system elements are tested on a quarterly basis; adequacy and operation of the systems are approved by a state fire official or other qualified authority annually.

*Comment:* Fire and/or smoke identification at the earliest possible moment is critical to fire control and fire fighting, as well as to the evacuation of staff and juveniles to preclude smoke inhalation and preserve life and

health.

## Safety Inspections

### 3-JCRF-3B-11 (Ref. New)

#### Mandatory

**73. For those programs providing mass-transport vehicles, written policy, procedure, and practice require, at a minimum, an annual safety inspection by qualified individuals.** Documentation of immediate completion of safety repairs shall be on file.

*Comment:* Bus transportation, whether program-owned, contracted, or local school board operated, must be safely maintained for juvenile, staff, and public safety. Bus inspections may be certified by the local school board transportation department, city/county or state inspection programs, or by a qualified bus mechanic using a checklist of safety features including but not limited to brakes, steering, tires, mirrors, emergency doors, etc.

## Threats to Security

### 3-JCRF-3B-12 (Ref. 2-6119)

**74. There is a written plan that provides for continuous facility operation in the event of employee work stoppage or other job action.** Copies of this plan are available to all supervisory personnel who are required to familiarize themselves with its contents.

*Comment:* In the event of mass sick calls, slow-downs, and related acts, a plan should be established that is known to all supervisory personnel and includes necessary coverage of facility posts, procedures for personnel reporting to work, and access to the workplace if there is a picket line.



## Section C: Rules and Discipline

**Principle:** The facility's rules of conduct and sanctions and procedures for violations are defined in writing and communicated to all juveniles and staff. Disciplinary procedures are carried out promptly and with respect for the juveniles.

### Rules of Conduct

#### 3-JCRF-3C-01 (Ref. New)

**75. Written policy, procedure, and practice provide that there is a written set of disciplinary regulations governing juvenile rule violations.** These are reviewed annually and updated, if necessary.

*Comment:* According to the *Flores* Agreement (Exhibit 1-C), program rules and discipline standards should consider the range of ages and maturity in the program, and are culturally sensitive to the needs of alien minors.

#### 3-JCRF-3C-02 (Ref. 2-6172)

**76. Written policy, procedure, and practice provide that all program rules and regulations pertaining to juveniles are conspicuously posted in the facility or included in a handbook that is accessible to all juveniles and staff.** When a literacy or communication problem exists, a staff member assists the juvenile in understanding the materials.

*Comment:* None.

### Hearing Decisions

#### 3-JCRF-3C-11 (Ref. 2-6197)

**77. Written policy, procedure, and practice ensure that room restriction does not exceed 8 hours without review and administrative authorization.** It is used only when the juvenile is dangerous to himself/herself or

others.

*Comment:* Occasionally, a juvenile may lose control and require restriction. During the restriction, the juvenile may be denied certain privileges; however, in no instance may regular meals, clothing, sleep, health care, religious needs, and/or staff assistance be denied.

## Basis for Decisions

### 3-JCRF-3C-12 (Ref. 2-6198)

**78. Written policy, procedure, and practice ensure that before facility restriction or privilege suspension, the reason(s) for the restriction is discussed, and the juvenile has the opportunity to explain the behavior.**

*Comment:* None.

### 3-JCRF-3C-13 (Ref. 2-6199)

**79. Written policy, procedure, and practice provide that during room restriction, visual and verbal contact by staff is made with the juvenile at least every 30 minutes.** This contact is recorded and retained by staff. The juvenile assists in determining the end of the restriction period.

*Comment:* During the period of restriction, a staff person should interact with the juvenile in an effort to solve problems and to determine a release time.

### 3-JCRF-3C-14 (Ref. 2-6202)

**80. Written policy, procedure, and practice provide that all instances of room restriction, privilege suspension, and facility restriction are recorded, dated, and signed by staff.** The record is reviewed and signed by a supervisory staff member daily.

*Comment:* This will assist in ensuring the consistent and proper application of discipline procedures.

## **Section D: Juvenile Rights**

**Principle:** The facility protects the safety and constitutional rights of juveniles and seeks a balance between expression of individual rights and preservation of order.

### **Access to Courts**

#### **3-JCRF-3D-01 (Ref. New)**

**81. Written policy, procedure, and practice ensure the right of juveniles to have access to courts.**

*Comment:* None.

### **Access to Counsel**

#### **3-JCRF-3D-02 (Ref. New)**

**82. Written policy, procedure, and practice ensure and facilitate juvenile access to counsel and assist juveniles in making confidential contact with attorneys and their authorized representatives. Such contact includes but is not limited to telephone communications, uncensored correspondence, and visits.**

*Comment:* According to the *Flores* Agreement (Exhibit 1-A.14), the program provides legal services information regarding the availability of free legal assistance, the right to be represented by counsel at no expense to the government, the right to a deportation or exclusion hearing before an immigration judge, and the right to apply for political asylum or to request voluntary departure in lieu of deportation. This information must be maintained by

the facility. If the facility does not have this information, the INS must provide it.

### Access to Programs and Services

#### 3-JCRF-3D-03 (Ref. New)

**83. Written policy, procedure, and practice provide that program access, work assignments, and administrative decisions are made without regard to juveniles' race, religion, national origin, or sex.**

*Comment:* Juveniles should be ensured equal opportunities to participate in all programs.

### Protection from Harm

#### 3-JCRF-3D-04 (Ref. 2-6196)

**84. Written policy, procedure, and practice provide that juveniles are not subjected to corporal or unusual punishment, humiliation, mental abuse, or punitive interference with the daily functions of living, such as eating or sleeping.**

*Comment:* Any sanctions that may adversely affect a juvenile's health or physical or psychological well-being are expressly prohibited. Corporal punishment or psychological intimidation should never be practiced.

The *Flores* Agreement (Exhibit 1-C) stipulates that juveniles will not be denied regular meals, sufficient sleep, exercise, medical care, correspondence privileges, or legal assistance.

#### 3-JCRF-3D-05 (Ref. New)

**85. Written policy, procedure, and practice provide for the reporting of all instances of child abuse and/or neglect consistent with appropriate state laws or local laws.**

*Comment:* Whenever a juvenile reports or staff observe indicators of child abuse and/or neglect, there are procedures for juvenile care and investigation of the allegation. Where appropriate, interagency agreements pursuant to child abuse should be implemented.

## Personal Property

### 3-JCRF-3D-06 (Ref. New)

**86. Written policy, procedure, and practice specify the personal property juveniles can retain in their possession and govern the control and safeguarding of such property.** Personal property retained in the facility is itemized in a written list that is kept in a permanent file; the juvenile receives a copy listing the property retained for storage.

*Comment:* Personal property should be accurately inventoried and securely stored.

## Grievance Procedures

### 3-JCRF-3D-07 (Ref. 2-6173)

**87. Written policy, procedure, and practice provide for a grievance and appeal process.** The grievance is transmitted without alteration, interference, or delay to the party responsible for its receipt and investigation. A written report as to the final disposition of the grievance should be prepared and filed.

*Comment:* Juveniles should have the opportunity to express themselves regarding problems they are having with the program without being subjected to any adverse action. The appeal process should be independent of the specific program activity that is the subject of the grievance, and should have various levels of appeal.

## Part IV. Facility Services

## Section A: Food Service

**Principle:** Meals are nutritionally balanced, well-planned, and prepared and served in a manner that meets established governmental health and safety codes.

### Dietary Allowances

**3-JCRF-4A-02** (Ref. 2-6120)

#### Mandatory

**88. A nutritionist, dietitian, or physician approves the menu and annually approves the nutritional value of the food served.**

*Comment:* None.

**3-JCRF-4A-03** (Ref. 2-6122)

**89. Written policy, procedure, and practice provide that food service staff develop advanced, planned menus and substantially follow the schedule in the planning and preparation of all meals, food flavor, texture, and temperature.** Appearance and palatability are taken into consideration.

*Comment:* All menus, including special diets, should be planned, dated, and available for review at least one week in advance. Notations should be made of any substitutions in the meals actually served, and these should be of equal nutritional value.

### Menu Planning

**3-JCRF-4A-04** (Ref. 2-6123)

**90. There is a single menu for staff and juveniles.**

*Comment:* None.

**Special Diets**

**3-JCRF-4A-05** (Ref. 2-6125)

**Mandatory**

**91. Written policy, procedure, and practice provide for special diets as prescribed by appropriate medical or dental personnel.**

*Comment:* Therapeutic diets should be available upon medical or dental authorization. Specific diets should be prepared and served to juveniles according to the orders of the treating physician or dentist, or as directed by the responsible health authority official. Medical or dental diet prescriptions should be specific and complete, furnished in writing to the food service manager, and rewritten monthly. Special diets should be kept as simple as possible and should conform as closely as possible to the foods served other juveniles.

**3-JCRF-4A-06** (Ref. 2-6126)

**92. Written policy, procedure, and practice provide for special diets for juveniles whose religious beliefs require adherence to religious dietary laws.**

*Comment:* Religious diet prescriptions should be specific and complete, furnished in writing to the food service manager, and rewritten monthly. Special diets should be kept as simple as possible and should conform as closely as possible to the foods served to other juveniles.

**Health and Safety Regulations**

**3-JCRF-4A-07** (Ref. 2-6121)

**Mandatory**

**93. Food service staff complies with all sanitation and health codes enacted by state or local authorities.**

*Comment:* All sanitation codes are to be strictly followed to ensure the health and welfare of the juveniles. Local or state health regulations usually require some type of medical examination and certification for people preparing food.

**Inspections**

**3-JCRF-4A-08** (Ref. New)

**94. Written policy, procedure, and practice provide for the following:**

- weekly inspection of all food service areas, including dining and food preparation areas and equipment;
- sanitary, temperature-controlled storage facilities for all foods; and
- daily checks of refrigerator and water temperatures.

*Comment:* Appropriate space and equipment should be available for the proper storage and refrigeration of food supplies. Dry food supplies are stored in a clean, dry, ventilated room not subject to wastewater backflow or other contamination. The American Dietary Association recommends storage temperatures for freezers to be !10° to 0° Fahrenheit and refrigerated storage at 32° to 36° Fahrenheit. However, the requirements may differ under certain conditions. When the requirements vary from the above, laws and/or regulations of the health authority having jurisdiction prevail.

**Meal Service**



### 3-JCRF-4A-09 (Ref. New)

#### 95. **Written policy, procedure, and practice provide that staff members supervise juveniles during meals.**

*Comment:* The practice of having staff members present during meals contributes to a more orderly experience in the dining area and enhances the relationship between the staff and the population. The practice also minimizes food waste, careless serving, and abuse of a juvenile by another juvenile. It also permits observation and reporting of unusual eating habits of individual juveniles, such as rejection or overeating. The degree and level of supervision may vary based on differential programs.

### 3-JCRF-4A-10 (Ref. New)

#### 96. **Written policy, procedure, and practice require that at least three meals, of which two are hot meals, are provided at regular meal times during each 24-hour period, with no more than 14 hours between the evening meal and breakfast.** Provided basic nutritional goals are met, variations may be allowed based on weekend and holiday food service demands.

*Comment:* When juveniles are not routinely absent from the institution for work or other purposes, at least three meals should be provided at regular times during each 24-hour period.

## Section B: Sanitation and Hygiene

**Principle:** The facility's sanitation and hygiene program complies with applicable regulations and standards of good practice to protect the health and safety of juveniles and staff.

### Sanitation Inspections

### 3-JCRF-4B-02 (Ref. 2-6105)

#### Mandatory

**97. The facility complies with the sanitation and health codes of the local and/or state jurisdiction.**

*Comment:* Compliance with sanitation and health codes is vital for the safety and well-being of the juveniles. Written reports of inspections by state or local authorities should be kept on file as assurance of continuing compliance with these codes. In the event that no local city and/or county codes apply, state codes will prevail. If neither local nor state codes apply, appropriate national codes should be applied to the facility. If applicable, OSHA (Office of Safety and Health Administration) standards can be applied.

**3-JCRF-4B-03 (Ref. 2-6109)**

**Mandatory**

**98. Written policy, procedure, and practice provide for vermin and pest control and trash and garbage removal.**

*Comment:* None.

**Water Supply**

**3-JCRF-4B-04 (Ref. New)**

**Mandatory**

**99. The facility's potable water source and supply, whether self-owned or operated by the public water department, is approved by an independent, outside source to be in compliance with jurisdictional laws and regulations.**

*Comment:* Safe drinking water is basic to human health and should be provided in any facility operation.

## Housekeeping

### 3-JCRF-4B-05 (Ref. 2-6087)

**100. Written policy, procedure, and practice provide that a housekeeping and maintenance plan is in effect to ensure that the facility is clean and in good repair.** Specific duties and responsibilities should be assigned to staff and juveniles.

*Comment:* Dirt or disrepair, such as large cracks in the plaster, holes in walls and ceilings, chipped and peeling paint, broken windows, or worn carpeting are not acceptable in any facility designated for community living.

## Clothing and Bedding Supplies

### 3-JCRF-4B-06 (Ref. New)

**101. Juveniles are provided the opportunity to have clean clothing.** The facility may provide this in several ways, including access to self-serve washer facilities, central clothing exchange, or a combination of the two. Wash basins in rooms are not sufficient to meet the standard.

*Comment:* None.

### 3-JCRF-4B-07 (Ref. New)

**102. The facility provides for the thorough cleaning and, when necessary, disinfecting of juvenile personal clothing before being stored or before allowing the juvenile to keep and wear personal clothing.**

*Comment:* Juvenile personal clothing should be cleaned and disinfected to prevent odors and pests and should be stored outside of the juvenile housing area.

### 3-JCRF-4B-08 (Ref. 2-6107)

**103. Written policy, procedure, and practice provide for the issue of suitable clean bedding and linen, including two sheets, pillow and pillowcase, one mattress, and sufficient blankets to provide comfort under existing temperature controls.** There is provision for linen exchange, including towels, at least weekly.

*Comment:* Collection, storage, and exchange methods for bedding and linens should be done hygienically; that is, blankets, pillows, and mattresses should be cleaned before reissue.

## Bathing and Personal Hygiene

### 3-JCRF-4B-09 (Ref. 2-6108)

**104. Written policy, procedure, and practice require that articles necessary for maintaining proper personal hygiene are provided and readily available upon reasonable request to all juveniles.** These articles include at least the following:

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soap;

- shampoo;
- toothbrush;
- toothpaste or powder;
- a comb;
- toilet paper; and
- special hygiene items for female residents.

*Comment:* Hygiene items may be available from the staff or other sources, as approved by the facility administrator.

Section C: Health Care

**Principle:** The facility provides comprehensive health care services by qualified personnel to protect the health and well-being of juveniles.

## Responsible Health Authority

**3-JCRF-4C-01** (Ref. 2-6129/6130)

### Mandatory

**105. Written policy, procedure, and practice provide that the facility has a designated health authority with responsibility for health care pursuant to a written agreement, contract, or job description.** The health authority may be a physician, health administrator, or health agency.

*Comment:* The responsibility of the health authority includes arranging for health care services and ensuring that juveniles have access to them.

## Unimpeded Access to Care

**3-JCRF-4C-02** (Ref. New)

**106. Written policy, procedure, and practice provide for access to health care and for a system for processing complaints regarding health care.** These policies are communicated verbally and in writing to juveniles upon their arrival in the facility, and are communicated in a language clearly understood by each juvenile. All decisions concerning access to health care are made by health care staff.

*Comment:* The facility should follow the policy of explaining access procedures verbally to juveniles unable to read. When the facility frequently has non-English-speaking juveniles, procedures should be explained and written in their language.

## Personnel

**3-JCRF-4C-03** (Ref. 2-6132)

**107. Appropriate state and federal licensure, certification, or registration requirements and restrictions apply to personnel who provide health care services to juveniles.** The duties and responsibilities of such personnel are governed by written job descriptions approved by the health authority. Verification of current credentials and job descriptions are on file in the facility.

*Comment:* Only qualified health care personnel should determine and supervise health care procedures. Written job descriptions should include the required professional qualifications and the individual's specific role in the health care delivery system. Verification of qualifications may consist of copies of current credentials or a letter from the state licensing or certifying body regarding current credential status. Nursing services are performed in accordance with professionally recognized standards of nursing practice and the jurisdiction's Nurse Practice Act.

## Qualifications

### 3-JCRF-4C-04 (Ref. New)

**108. Written policy, procedure, and practice provide that treatment by health care personnel other than a physician, dentist, psychologist, optometrist, podiatrist, or other independent provider is performed pursuant to written standing or direct orders by personnel authorized by law to give such orders.** Nurse practitioners and physician's assistants may practice within the limits of applicable laws and regulations.

*Comment:* Professional practice acts differ in various states as to issuing direct orders for treatment, so the laws in each state need to be studied for implementation of this standard. Standing medical orders are written for the definitive treatment of identified conditions and for on-site treatment of emergency conditions for any person having the condition to which the order pertains. Direct orders are written specifically for the treatment of one person's particular condition.

## Mental Health Services

### 3-JCRF-4C-05 (Ref. New)

**109. Written policy, procedure, and practice specify the provision of mental health services to juveniles.** These services include but are not limited to those provided by qualified mental health professionals who meet the educational and license/certification criteria specified by their respective professional disciplines.

*Comment:* An adequate number of qualified staff members should be available to deal directly with juveniles who have severe mental health problems as well as to advise other correctional staff in their contacts with such individuals.

### 3-JCRF-4C-06 (Ref. New)

**110. There is a written suicide prevention and intervention program that is reviewed and approved by a qualified medical or mental health professional.** All staff with responsibility for juvenile supervision are trained in the implementation of the program. The program includes specific procedures for intake screening, identification, and supervision of suicide-prone juveniles.

*Comment:* None.

## Health-trained Staff Member

### 3-JCRF-4C-07 (Ref. New)

**111. When facilities do not have full-time, qualified, health-trained personnel, a health-trained staff member coordinates the health delivery services.**

*Comment:* Coordination duties may include reviewing initial screening forms for needed follow-up, readying juveniles and their records for sick call, and assisting in carrying out orders regarding such matters as diets, housing, and work assignments.

## Pharmaceuticals

### 3-JCRF-4C-08 (Ref. 2-6142)

**112. Written policy, procedure, and practice provide that the program's health care plan adheres to state and federal laws and regulations regarding storage and distribution of medications.**

*Comment:* None.

## Health Screenings and Examinations

### JCRF-4C-09 (Ref. New)

#### Mandatory

**113. Written policy, procedure, and practice require medical, dental, and mental health screening to be performed by health-trained or qualified health care personnel on all juveniles.** This screening includes the following:

Inquiry into:

- current illness and health problems, including venereal diseases and other infectious diseases;
- dental problems;
- mental health problems;
- use of alcohol and other drugs, which includes types of drugs used, mode of use, amounts used, frequency of use, date or time of last use, and a history of problems that may have occurred after ceasing use (e.g., convulsions);
- past and present treatment or hospitalization for mental disturbance or suicide; and
- other health problems designated by the responsible physician.

Observation of:

- behavior, which includes state of consciousness, mental status, appearance, conduct, tremors, and sweating;
- body deformities, ease of movement, etc.; and
- condition of skin, including trauma markings, bruises, lesions, jaundice, rashes and infestations, and needle marks or other indicators of drug abuse.

*Comment:* According to the *Flores* Agreement (Exhibit 1-A.2), the program provides routine medical and dental care, family planning services, and emergency health care services, including a complete medical examination (with screening for infectious diseases) within 48 hours of admission, excluding weekends and holidays, unless the juvenile was recently examined at another facility; appropriate immunizations in accordance with the U.S. Public Health Service, Center for Disease Control; administration of prescribed medication and special diets; and appropriate mental health interventions when necessary.

### 3-JCRF-4C-11 (Ref. New)

#### 114. **Written policy, procedure, and practice provide for the collection and recording of health appraisal data and require the following:**

- the process is completed in a uniform manner as determined by the health authority;
- health history and vital signs are collected by health-trained or qualified health personnel;
- review of the results of the medical examinations, tests, and identification of problems is performed by a physician; and
- collection of all other health appraisal data is performed only by qualified health personnel.

*Comment:* The initial screening must be followed with a more detailed health examination by the appropriate health appraisal personnel to adequately identify the health care needs of each juvenile. It also is important that the examination be performed in a uniform manner to ensure that it is thorough and consistent for each juvenile.

### 3-JCRF-4C-12 (Ref. 2-6140)

#### 115. **Written policy, procedure, and practice provide for medical examination of any employee or juvenile suspected of having a communicable disease.**

*Comment:* Examination results must be made available quickly to ensure prompt and proper treatment.

## Dental Screening and Examination

### 3-JCRF-4C-13 (Ref. 2-6131)

#### 116. **Dental care is provided to each juvenile under the direction and supervision of a dentist licensed in the state.**

*Comment:* None.

## Emergency Health Care

### 3-JCRF-4C-14 (Ref. New)

#### **Mandatory**

#### 117. **Written policy, procedure, and practice provide for 24-hour emergency medical, dental, and mental health care availability as outlined in a written plan that includes arrangements for the following:**

- on-site emergency first aid and crisis intervention;



- emergency evacuation of the juvenile from the facility;
- use of an emergency medical vehicle;
- use of one or more designated hospital emergency rooms or other appropriate health facilities;
- emergency on-call physician, dentist, and mental health professional services when the emergency health facility is not located in a nearby community; and
- security procedures providing for the immediate transfer of juveniles, when appropriate.

*Comment:* Arrangements should be made with nearby hospitals or other facilities for all health services that cannot be appropriately provided within the facility or where contractual arrangements can result in a better or broader range of services. In the event the usual health services are not available, particularly in emergency situations, the facility should have developed a back-up to serve the program. The plan might include an alternate hospital emergency service or a physician “on call” service.

## First Aid

### 3-JCRF-4C-15 (Ref. New)

**118. Written policy, procedure, and practice provide that careworker staff and other personnel are trained to respond to health-related situations within a 4-minute response time.** A training program is established by the responsible health authority in cooperation with the facility administrator that includes the following:

- recognition of signs and symptoms and knowledge of action required in potential emergency situations;
- administration of first aid and cardiopulmonary resuscitation (CPR) and current certification;
- methods of obtaining assistance;
- signs and symptoms of mental illness, retardation, and chemical dependency; and
- procedures for patient transfers to appropriate medical facilities or health care providers.

*Comment:* None.

### 3-JCRF-4C-16 (Ref. 2-6135)

**119. The facility has available at all times first aid equipment approved by a recognized health authority.**

*Comment:* The health authority may be a physician, health administrator, or organization that has the expertise to determine the potential first aid needs of the facility and to evaluate the condition of the first aid supplies and equipment.

### 3-JCRF-4C-17 (Ref. New)

**120. Written policy, procedure, and practice provide that persons injured in an incident receive immediate medical examination and treatment.**

*Comment:* Immediate medical examination and treatment should be required in all instances involving the use of force.

## Serious and Infectious Diseases

### 3-JCRF-4C-21 (Ref. 2-6134-1)

**121. Written policy, procedure, and practice address the management of serious and infectious diseases.** These policies and procedures are updated as new information becomes available.

*Comment:* Because of their serious nature, methods of transmission, and public sensitivity, infectious diseases such as tuberculosis, hepatitis-B, and AIDS (acquired immunodeficiency syndrome) require special attention. Agencies should work with the responsible health authority in establishing policy and procedure that include the following: an ongoing education program for staff and residents; control, treatment, and prevention strategies, which may include screening and testing, special supervision, and/or special housing arrangements, as appropriate; protection of individual confidentiality; and media relations.

### 3-JCRF-4C-22 (Ref. 2-6139-1)

**122. There is written policy, procedure, and practice that specify approved actions to be taken by employees concerning juveniles who have been diagnosed with HIV.** This policy shall be reviewed annually and shall include, at a minimum, the following:

- when and where juveniles are to be tested;
- appropriate safeguards for staff and juveniles;
- who shall conduct the tests;
- when and under what conditions the juveniles are to be separated from the general population;
- staff and juvenile training procedures; and
- issues of confidentiality.

*Comment:* None.

## Juvenile Participation in Research

### 3-JCRF-4C-26 (Ref. 2-6073)

#### **Mandatory**

**123. Written policy prohibits the use of juveniles for medical, pharmaceutical, or cosmetic experiments.** This policy does not preclude

individual treatment of a juvenile based on his or her need for a specific medical procedure that is not generally available.

*Comment:* A person confined in a facility is incapable of volunteering as a human subject without hope of reward and cannot do so on the basis of fully informed consent. Therefore, juveniles should not participate in experimental projects involving medical, pharmaceutical, or cosmetic research, including aversive conditioning, psychosurgery, electrical stimulation of the brain, or the application of cosmetic substances to the body that are being tested for possible commercial use. This prohibition does not preclude individual treatment of a juvenile by his or her physician with a new medical procedure, subsequent to a full explanation of the treatment's positive and negative features. The agreement is between the physician and the juvenile, and is not part of a general program of medical experimentation involving payment to juveniles for submission to treatment.

### **Notification of Designated Individuals**

#### **3-JCRF-4C-27 (Ref. 2-6146)**

**124. Written policy, procedure, and practice provide for the prompt notification of juveniles' parents/guardians in case of serious illness, surgery, injury, or death.** Any death in the program is reported immediately to the proper officials.

*Comment:* Whenever a juvenile becomes seriously ill, requires surgery, or dies, the parents/guardians should be promptly notified by a telephone call, a telegram, or other rapid means of communication. In the event of death, the head of the facility should be notified. The coroner and appropriate law enforcement officials should also be notified.

### **Health Record Files**

#### **3-JCRF-4C-28 (Ref. New)**

**125. The health record file contains the following:**

- the completed receiving screening form;
- health appraisal data forms;
- all findings, diagnoses, treatments, and dispositions;
- prescribed medications and their administration;
- signature and title of documenter;
- consent and refusal forms;
- place, date, and time of health encounters; and
- health service reports (e.g., dental, mental health, and consultations).

The method of recording entries in the records, the form and format of the records, and the procedures for their maintenance and safekeeping are approved by the health authority.

*Comment:* None.

## Transfer of Records

### 3-JCRF-4C-29 (Ref. New)

**126. For juveniles being transferred to other facilities, summaries or copies of the medical history record are forwarded to the receiving facility prior to or at arrival.**

*Comment:* Because the receiving facility has responsibility for medical care of new arrivals, it is imperative that it receives all available medical information as soon as possible. Written authorization of the juvenile is not required for the transfer of this information. This will reduce duplication of screening procedures, ensure continuity in treatment, and reduce the need for segregation until existence of contagious diseases can be determined.

## Part V. Juvenile Services

### Section A: Juvenile Services

**Principle:** All incoming juveniles undergo thorough screening and assessment at admission and receive a thorough orientation to the facility's procedures, rules, programs, and services.

#### Admission

### 3-JCRF-5A-01 (Ref. 2-6147)

**127. The facility has clearly defined written policies, procedures, and practices governing admission.**

*Comment:* The policies and procedures governing the admission process should include but not be limited to types of information gathered on all applicants before admission, criteria for acceptance, and procedures to be followed when accepting or not accepting referrals.

### 3-JCRF-5A-03 (Ref. 2-6149)

**128. The agency records information on each juvenile to be admitted that, unless prohibited by local statute, includes, at a minimum, the following:**

- name;
- address;
- date of birth;
- sex;
- race or ethnic origin;
- reason for referral;
- whom to notify in case of emergency;
- date information gathered;
- name of referring agency or committing authority;
- educational/school history;

- social history, where available;
- special medical problems or needs;
- personal physician, if applicable;
- legal status, including jurisdiction, length and conditions of placement; and
- signature of both interviewee and employee gathering information.

*Comment:* The agency's admission information form should include the basic data necessary to facilitate a continuous program for the juvenile. The information on the form can be expanded to meet the needs of individual facilities.

According to the *Flores Agreement* (Exhibit 1-A.3), a comprehensive and realistic individual plan for the care of each juvenile is developed according to his or her needs, as determined by the individualized needs assessment. An individualized needs assessment shall include (a) various initial intake forms; (b) essential data relating to the identification and history of the minor and family; (c) identification of the minor's special needs including any specific problem(s) which appear to require immediate intervention; (d) an educational assessment and plan; (e) an assessment of family relationships and interaction with adults, peers, and authority figures; (f) a statement of religious preference and practice; (g) an assessment of the minor's personal goals, strengths, and weaknesses; and (h) identifying information about immediate family members, other relatives, godparents, or friends who may be residing in the United States and may be able to assist in family reunification. Individual plans shall be implemented and closely coordinated through an operative case management system.

## Reception and Orientation

### 3-JCRF-5A-05 (Ref. 2-6151)

**129. Written policy, procedure, and practice provide that the facility advises the referring facility when a prospective juvenile is not accepted into the program, stating specific reasons.**

*Comment:* An important part of the referral process is the follow-up provided to the referring source. Such communication will assist the referring source in making future referrals.

### 3-JCRF-5A-07 (Ref. 2-6153)

**130. At the time of admission, facility staff discuss program goals, services available, rules governing conduct, program rules, and possible disciplinary actions with the juvenile; this discussion is documented by employee and juvenile signatures.**

*Comment:* It is important that the juvenile, at the time of admission, understand what can be expected of the program and what the program expects from him or her. This discussion can occur before admission, but no later than at the time of admission and acceptance into the program. The discussion or orientation should also include but not be limited to curfew, meal hours, program participation, house rules, eligibility criteria for discharge, and staff expectations.

The *Flores* Agreement (Exhibit 1-A.9) stipulates that the availability of legal assistance must also be explained during orientation.

### 3-JCRF-5A-09 (Ref. 2-6155)

**131. Written policy, procedure, and practice provide that the facility does not discriminate on the basis of race, religion, national origin, gender, or disability.**

*Comment:* The program should demonstrate both in writing and practice that it accepts any juvenile who is in need of services and meets the program eligibility criteria.

### 3-JCRF-5A-12 (Ref. 2-6156)

**132. The facility provides or makes arrangements for the provision of the following services:**

- educational, vocational, and psychological assessment;
- educational/vocational programs;
- individual and group counseling activities;
- appropriate recreation and leisure activities;
- consistent family contact;
- food service;
- assistance with transportation;
- transitional services;
- emergency financial assistance;
- medical health services;
- mental health services; and
- employment counseling and placement.

*Comment:* The program cannot and should not provide all services in-house, not only because the costs would be prohibitive, but also because the basic philosophy of community residential programs would be destroyed. If additional services are not available without charge, the program should assist in the provision of funds for them. Involvement of other support services for the juveniles is an essential element of community residential programs, and referral to and assistance with community agencies should be encouraged whenever possible.

According to the *Flores* Agreement (Exhibit 1-A.13), family reunification services designed to identify relatives in the United States as well as in foreign countries and assistance in obtaining legal guardianship when necessary for the minor's release are services that may be carried out by INS in conjunction with contracted personnel at the facility. *Flores* (Exhibit 1-A.8) also holds that acculturation and adaptation services be made available, to include information for the development of social and inter-personal skills that contribute to those abilities needed to live independently and responsibly.

## New Juveniles

### 3-JCRF-5A-13 (Ref. New)

**133. Written policy, procedure, and practice provide that juveniles new to the facility receive written orientation materials and/or translations in their own language, if they do not understand English.** When a literacy problem exists, a staff member assists the juvenile in understanding the material. Completion of orientation is documented by a statement signed and dated by the juvenile.

*Comment:* Orientation should include informal classes and the distribution of written materials about the facility's programs, rules, and regulations. Orientation should also be used to observe juvenile behavior and to identify special problems.

## Section B: Classification

**Principle:** Juveniles are classified to the most appropriate level of supervision and programming, both upon admission and upon review of their status.

### Classification Plan

#### 3-JCRF-5B-08 (Ref. 2-6171)

**134. Where a language or literacy problem exists that can lead to a juvenile's misunderstanding of agency rules and regulations, assistance is provided to the juvenile either by staff or another qualified individual under the supervision of a staff member.**

*Comment:* There are situations when a juvenile will require the assistance of another person; most important of which is understanding the rules and regulations governing personal conduct in the program.

## Section C: Social Services

**Principle:** The facility makes available the professional services necessary to meet the identified needs of juveniles. Such services may include individual and family counseling, family planning and parent education, and other progress release planning for juveniles with drug and alcohol addictions.

### Program Coordination and Supervision

#### 3-JCRF-5C-02 (Ref. 2-6168)

**135. Written policy, procedure, and practice provide that each juvenile is assigned a facility staff member who meets with and counsels that juvenile.**

*Comment:* In order to ensure that each juvenile receives adequate as well as continuing services, responsibility for the case management of a juvenile should be assigned to a specific staff member.

## Counseling

### 3-JCRF-5C-03 (Ref. New)

**136. Written policy, procedure, and practice provide that staff members are available to counsel juveniles at their request; provision is made for counseling juveniles on an emergency basis.** Such services may include individual and family counseling, family planning and parent education, and other progress release planning for juveniles with drug and alcohol addictions.

*Comment:* In assisting juveniles with their personal problems and with adjustment to the facility, staff members should make time available on a regularly scheduled basis for appointments with juveniles who request it. Because juveniles may have problems that require immediate attention, at least one staff member should be available 24 hours a day.

According to the *Flores* Agreement (Exhibit 1-A.6), the program includes at least one individual counseling session per week conducted by trained social work staff. Individual counseling session objectives should include reviewing the juvenile's progress, establishing new short-term objectives, and addressing both the developmental and crisis-related needs of each juvenile. *Flores* also specifies (Exhibit 1-A.7) that group counseling sessions should be offered at least twice a week. Group is usually an informal process and takes place with all juveniles present. It is a time when new juveniles are given the opportunity to get acquainted with the staff, other juveniles, and the rules of the program. It is an open forum where everyone gets a chance to speak. Daily program management is discussed and decisions are made about recreational activities, etc. It is a time for staff and juveniles to discuss whatever is on their minds and to resolve problems.

## Section D: Education/Vocation

**Principle:** A written body of policy and procedures governs the facility's programs. All juveniles will have an individualized program that will contain elements of education, vocational education, work, recreation, and social services.

### Educational/Vocational Training

#### 3-JCRF-5D-01 (Ref. New)



**137. Written policy, procedure, and practice provide for coordination and continuity between educational, vocational, and work programs.**

*Comment:* In accordance with the Flores Agreement (Exhibit 1-A.4), the program provides educational services appropriate to the juvenile's level of development and communication skills in a structured classroom setting, Monday through Friday, concentrating primarily on the development of basic academic competencies and secondarily on English Language Training. The educational program shall include instructional, educational, and other reading materials in such languages as needed. Basic academic areas should include Science, Social Studies, Math, Reading, Writing, and Physical Education. The program shall provide juveniles with appropriate reading materials in languages other than English for use during the juvenile's leisure time.

**3-JCRF-5D-02 (Ref. 2-6183)**

**138. Special education programs are available to meet the needs of special education students as defined in public law.**

*Comment:* There is a large number of persons with disabilities in juvenile correctional programs. They have special academic and vocational needs. P.L. 94-142 mandates services for persons with disabilities to ensure that all students who wish to participate in education are provided the opportunity to do so.

**3-JCRF-5D-03 (Ref. New)**

**139. Written policy, procedure, and practice indicate compliance with laws pertaining to individual special education plans prior to placement of juveniles into or out of special education programs.**

*Comment:* None.

**3-JCRF-5D-04 (Ref. New)**

**140. Written policy, procedure, and practice provide that educational, vocational, work and treatment programs, credits, certificates, or diplomas are accepted by community agencies.**

*Comment:* Educational programs must be at least equal in quality and requirements to equivalent programs in the community to ensure that student credits, certificates, and diplomas are accepted by employers and transferable to schools and colleges after release.

## **Employment**

**3-JCRF-5D-05 (Ref. New)**

**141. Written policy, procedure, and practice provide that the use of work does not interfere with educational and treatment programs.**

*Comment:* None.

## Section E: Recreation

**Principle:** A written body of policy and procedures governs the facility's recreation and activity programs for juveniles, including coordination and supervision, facilities and equipment, community interaction, and activities initiated by juveniles.

### Staff and Space Requirements

#### 3-JCRF-5E-01 (Ref. 2-6184)

**142. Written policy, procedure, and practice provide for indoor and outdoor recreational and leisure time needs of juveniles.** Juveniles should be encouraged to be physically active, depending on their capabilities, and receive at least two hours of planned recreation per day.

*Comment:* Provision should be made for periodic group activities outside the facility. Also, there should be space for indoor leisure time activities, such as television, games, reading, and studying.

According to the *Flores* Agreement (Exhibit 1-A.5), the recreation and leisure time plan shall include daily outdoor activity, weather permitting; at least 1 hour per day of large muscle activity; and 1 hour per day of structured leisure time activities. Activities should be increased to a total of 3 hours on days when school is not in session. Structured leisure time activities do not include time spent watching television.

## Section F: Religion

**Principle:** A written body of policy and procedures governs the facility's religious programs for juveniles, including coordination and supervision, opportunities to practice the requirements of one's faith, and use of community resources.

### Participation

#### 3-JCRF-5F-01 (Ref. 2-6185)

**143. Written policy, procedure, and practice provide that juveniles have the opportunity to participate in practices of their religious faith in accordance with legislation of the authority having jurisdiction.**

*Comment:* All juveniles should have the opportunity to practice their religions.

The *Flores* Agreement (Exhibit 1-A.10) holds that juveniles are to be given access to religious services of their choice, whenever possible.

## Section G: Mail, Telephone, Visiting

**Principle:** A written body of policy and procedure governs the facility's mail, telephone, and visiting services, including mail inspection, public phone use, and routine and special visits.

## Mail

### 3-JCRF-5G-01 (Ref. 2-6188)

**144. Written policy, procedure, and practice provide that indigent juveniles, as defined in policy, receive a specified postage allowance to maintain community ties.**

*Comment:* A juvenile without financial resources should be provided the means to send a reasonable number of letters per month. Community ties include family, personal friends, etc., but not privileged communication to attorneys, public officials, and courts.

## Access to Publications

### 3-JCRF-5G-02 (Ref. New)

**145. Written policy, procedure, and practice govern juvenile access to publications.**

*Comment:* Specific policies and procedures should exist to define which publications are allowed in the facility and how they will be inspected. Restrictions to access should be directly related to the maintenance of facility order and security.

## Inspection of Letters and Packages

### 3-JCRF-5G-03 (Ref. 2-6187)

**146. Written policy, procedure, and practice provide that juveniles' mail, both incoming and outgoing, may be opened and inspected for contraband.** When based on legitimate facility interests of order and security, mail may be read or rejected. The juvenile is notified when incoming mail is returned or outgoing mail is withheld.

*Comment:* Juveniles should be permitted uncensored correspondence, as long as it poses no threat to the safety and security of the facility, public officials, or the general public and is not being used in the furtherance of illegal activities. Case law has defined legal limits. When mail is censored or rejected, the author must be notified of the reason for the action and provided an opportunity to appeal the decision.

## Forwarding of Mail

### 3-JCRF-5G-04 (Ref. New)

**147. Written policy, procedure, and practice provide for the forwarding of first class letters and packages after transfer or release.**

*Comment:* All first class letters and packages should be forwarded to juveniles who are transferred to other facilities or released, provided a forwarding address is available. If a forwarding address is not available, first class letters and packages should be returned to the sender. Post office policy and procedure should be made available to juveniles.

## Telephone

**3-JCRF-5G-05** (Ref. 2-6189)

**148. Written policy, procedure, and practice provide for juvenile access to a telephone to initiate and receive personal calls.**

*Comment:* Juveniles should be permitted reasonable access to a telephone to make both personal and program-related calls. This may be a pay phone. Written policy specifies the hours of telephone availability and any limitations on telephone calls.

## Visiting

**3-JCRF-5G-06** (Ref. 2-6186)

**149. Written policy, procedure, and practice provide that juveniles receive approved visitors during normal visiting hours, except where there is substantial evidence that a visitor poses a threat to the safety of the juvenile or to the security of the program.**

*Comment:* The range of visiting hours and/or approved visitors should be as broad as possible. Whenever a visitor is permanently denied access to the facility, such as through a court order, the reasons for exclusion should be specified in a written report, copies of which are kept on file and given to the juvenile involved, if requested.

According to the *Flores* Agreement (Exhibit 1-A.11), visitation and contact with family members (regardless of their immigration status) is structured to encourage such visitation. The staff shall respect the juvenile's privacy while reasonably preventing his or her unauthorized release.

**3-JCRF-5G-07** (Ref. New)

**150. Written policy, procedure, and practice provide for special visits.**

*Comment:* Sometimes there are emergency events or circumstances that require special visitation needs. The policy should provide guidelines for responding to these situations.

## Section H: Release

**The following two standards are taken from the *ACA Standards for Juvenile Detention Facilities, 3rd. ed. (1991).***

**Principle:** The facility provides a structured program to help juveniles make a satisfactory transition upon release from their detention.

## **Release Preparation**

### **3-JDF-5H-02 (Ref. 2-8395)**

**151. Written procedures for releasing juveniles include but are not limited to the following:**

- verification of identity;
- verification of release papers;
- completion of release arrangements, including the person or agency to whom the juvenile is to be released;
- return of personal effects;
- completion of any pending action, such as grievances or claims for damaged or lost possessions;
- medical screening and arrangements for community follow-up when needed;
- transportation arrangements; and
- instructions on forwarding of mail.

*Comment:* The release process should ensure that all matters relating to the facility are completed. If the juvenile is to be released to his or her family, the person accepting the juvenile should be identified, or an unescorted release must be verified. If released to another agency, everyone involved should understand what is to occur with respect to timing, expectations, forwarding of records, and person designated to complete the transfer. The party or entity responsible for or having legal custody of the juvenile must also be notified.

### **3-JDF-5H-07 (Ref. New)**

**152. Written policy, procedure, and practice provide for and govern escorted and unescorted day leaves into the community.**

*Comment:* There should be provision to escort juveniles into the community for needed medical and dental care; to visit ill family members or attend funerals; and to participate in community affairs and/or events that would have a positive influence on the juvenile. Unescorted or day leaves should be extended for a variety of reasons related to the juvenile's planned return to the community and should be consistent with public safety.

| <p style="text-align: center;"><b>INS Secure Juvenile Standards Checklist</b></p>  | <p style="text-align: center;"><b>Rating 1–5:</b><br/> 1=in compliance; 2=not in compliance;<br/> 3= exception noted; 4=staff information; 5=confirmed</p> |   |   |   |   |
|--|--|---|---|---|---|
| <p><b>A. Administration and Management (Part I of JDF manual)<u>4</u></b></p>  | 1  | 2 | 3 | 4 | 5 |
| <p>1. A criminal record check is performed on all new employees in accordance with state and federal statutes (3-JDF-1C-13).</p>                                 |  |   |   |   |   |
| <p>2. Written policy governs the management of case records, including all required areas (3-JDF-1E-01).</p>   |  |   |   |   |   |
| <p>3. The facility administration maintains and has available in a master file a detailed record on each juvenile (3-JDF-1E-02).</p>                             |  |   |   |   |   |
| <p>4. Written policy provides that an updated case file is transferred within 72 hours of a juvenile’s transfer to another facility (3-JDF-1E-04).</p>           |  |   |   |   |   |
| <p>5. Written policy safeguards records from unauthorized and improper disclosure (3-JDF-1E-08).</p>   |  |   |   |   |   |
| <p><b>B. Physical Plant (Part II of JDF manual)</b></p>  | 1  | 2 | 3 | 4 | 5 |
| <p>6. The facility conforms to all applicable fire safety codes (3-JDF-2A-03).</p>   |  |   |   |   |   |
| <p>7. A qualified source has documented that finishing materials in juvenile living areas comply with recognized codes (3-JDF-2A-04).</p>                        |  |   |   |   |   |
| <p>8. Juveniles’ rooms and sleeping areas conform with all space requirements (3-JDF-2C-02).</p>   |  |   |   |   |   |
| <p>9. Dayrooms for varied juvenile activities are separated from sleeping areas by a floor-to-ceiling wall (3-JDF-2C-04).</p>                                    |  |   |   |   |   |
| <p>10. There is at least 1 toilet for every 12 male juveniles and 8 female juveniles; and at least 2 toilets in houses with 5 or more juveniles (JDF-2C-06).</p> |  |   |   |   |   |
| <p>11. Juveniles have access to wash basins with hot and cold running water, at a ratio of 1 basin for every 12 occupants (3-JDF-2C-07).</p>                     |  |   |   |   |   |
| <p>12. Juveniles have access to showers with temperature-controlled hot and cold running water, with at least 1 shower for every 8 juveniles (3-JDF-2C-08).</p>  |  |   |   |   |   |
| <p>13. Male and female juveniles do not occupy the same sleeping room (3-JDF-2C-12).</p>   |  |   |   |   |   |
| <p>14. Written policy provides that all housing areas comply with specified lighting and other environmental requirements (3-JDF-2D-01).</p>                     |  |   |   |   |   |

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| 15. Temperatures in indoor living and work areas are appropriate to summer and winter comfort zones (3-JDF-2D-03).                                       |  |  |  |  |  |
| 16. School classroom designs conform with local or state educational requirements (3-JDF-2E-05).   |  |  |  |  |  |
| 17. The food preparation area has space appropriate to population size, type of food preparation, and methods of meal service (3-JDF-2E-07).             |  |  |  |  |  |
| 18. Provisions exist for adequate storage and loading areas and for garbage disposal facilities (3-JDF-2E-08).   |  |  |  |  |  |
| 19. There is space in the facility to store and issue clothing, bedding, cleaning supplies, and other items required for daily operations (3-JDF-2E-11). |  |  |  |  |  |
| 20. Space is provided for the safe and secure storing of juveniles' personal property (3-JDF-2E-12).   |  |  |  |  |  |
| 21. There is space for a 24-hour control center to monitor and coordinate the facility's security, safety, and communications systems (3-JDF-2G-01).     |  |  |  |  |  |
| 22. The facility's perimeter is controlled to keep juveniles in and the general public out, unless they have proper authorization (3-JDF-2G-02).         |  |  |  |  |  |

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| <b>INS Secure Juvenile Standards Checklist</b>   | <b>Rating 1–5:</b><br>1=in compliance; 2=not in compliance;<br>3= exception noted; 4=staff information; 5=confirmed |   |   |   |   |
|  | <b>C. Institutional Operations (part III of JDF manual)</b>   | 1 | 2 | 3 | 4 |
| 23. There is a manual containing all procedures for facility security and control, with detailed instructions for implementing them (3-JDF-3A-01).     |   |   |   |   |   |
| 24. The facility has a communication system between the control center and juvenile living areas (3-JDF-3A-02).  |   |   |   |   |   |
| 25. The facility maintains a daily report on juvenile population movement (3-JDF-3A-03).   |   |   |   |   |   |
| 26. Written policy requires that coed facilities have both a male and a female staff member on duty at all times (3-JDF-3A-07).                        |   |   |   |   |   |
| 27. Written policy requires staff to keep a permanent log and to prepare shift reports that record both routine and unusual occurrences (3-JDF-3A-09). |   |   |   |   |   |

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| 28. Written policy requires at least weekly inspection and maintenance of all security devices, with corrective action taken as needed (3-JDF-3A-12).        |  |  |  |  |  |
| 29. The facility has a system for physically counting juveniles (3-JDF-3A-13).   |  |  |  |  |  |
| 30. Written policy provides that restraint devices are applied only with the facility administrator's approval, and never as punishment (3-JDF-3A-16).       |  |  |  |  |  |
| 31. Written policy provides that the facility maintain a written record of routine and emergency distribution of restraint equipment (3-JDF-3A-17).          |  |  |  |  |  |
| 32. All special incidents, e.g., hostage taking or use of force, are reported in writing, and dated and signed by the reporting staff person (3-JDF-3A-18).  |  |  |  |  |  |
| 33. Written policy provides for searches of facilities and juveniles to control and dispose of contraband (3-JDF-3A-19).                                     |  |  |  |  |  |
| 34. Written policy provides that manual or instrument inspection of body cavities is done only with reason and authorization (3-JDF-3A-20).                  |  |  |  |  |  |
| 35. Written policy allows visual inspection of juvenile body cavities only when a reasonable belief exists that he/she is carrying contraband (3-JDF-3A-21). |  |  |  |  |  |
| 36. Written policy governs the control and use of keys (3-JDF-3A-22).  |  |  |  |  |  |
| 37. Written policy governs the control and use of tools and culinary and medical equipment (3-JDF-3A-23).  |  |  |  |  |  |
| 38. Written policy governs the availability, control, and use of chemical agents and related security devices (3-JDF-3A-26).                                 |  |  |  |  |  |
| 39. Written policy requires that personnel using force to control juveniles give a written report to the facility administrator by end of TDY (3-JDF-3A-27). |  |  |  |  |  |

(table continued on next page)

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| 40. Written policy provides that persons injured in an incident receive immediate medical attention (3-JDF-3A-28).                                    |  |  |  |  |  |
| 41. Firearms are not permitted in facilities except in emergency situations (3-JDF-3A-29).  |  |  |  |  |  |
| 42. Written policy restricts the use of physical force to justifiable instances only, such as for self defense or protection of others (3-JDF-3A-30). |  |  |  |  |  |
| 43. Written policy specifies the facility's fire prevention regulations and practices (3-JDF-3B-01).  |  |  |  |  |  |
| 44. Written policy requires a comprehensive monthly compliance inspection of the facility by a qualified fire and safety officer (3-JDF-3B-02).       |  |  |  |  |  |
| 45. Specifications for selecting and purchasing facility furnishings indicate   |  |  |  |  |  |



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| their fire safety performance requirements (3-JDF-3B-03).  |   |   |   |   |   |
| 46. Facilities have noncombustible receptacles for smoking materials, and separate containers for other combustible refuse (3-JDF-3B-04).                |   |   |   |   |   |
| 47. Written policy governs the control and use of all flammable, toxic, and caustic materials (3-JDF-3B-05).   |   |   |   |   |   |
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| <b>C. Institutional Operations—Cont. (part III of JDF manual)</b>  | 1   | 2 | 3 | 4 | 5 |
| 48. Written policy requires a communications system within the facility and between it and the community for emergency situations (3-JDF-3B-07).         |   |   |   |   |   |
| 49. The facility has a certified evacuation plan for major emergencies (3-JDF-3B-10).  |   |   |   |   |   |
| 50. All facility personnel are trained in implementing written emergency plans (3-JDF-3B-11).  |   |   |   |   |   |
| 51. Written policy specifies juveniles' immediate release in case of emergency, with a backup system in place (3-JDF-3B-12).                             |   |   |   |   |   |
| 52. There are written procedures governing escapes that are reviewed at least annually and updated as needed (3-JDF-3B-13).                              |   |   |   |   |   |
| 53. Written rules of juvenile conduct specify prohibited acts within the facility and penalties for various degrees of violation (3-JDF-3C-02).          |   |   |   |   |   |
| 54. A rulebook of all chargeable offenses and consequences is given to each juvenile and staff member, in other languages as necessary (3-JDF-3C-03).    |   |   |   |   |   |
| 55. Written policy requires that juveniles are told the reasons behind imposed restrictions, and get an opportunity to explain themselves (3-JDF-3C-06). |   |   |   |   |   |
| 56. During room restriction, staff contact is made with the juvenile at least every 15 minutes, depending on his/her emotional state (3-JDF-3C-07).      |   |   |   |   |   |
| 57. Written policy specifies room restriction for minor misbehavior only as a "cooling off" period, to last from 15 to 60 minutes (3-JDF-3C-08).         |   |   |   |   |   |
| 58. Written policy provides that juveniles who commit criminal acts are referred to appropriate court or law enforcement officials (3-JDF-3C-09).        |   |   |   |   |   |
| 59. A juvenile charged with a major rule violation, e.g., that imperils personal or another's safety, may be confined for up to 24 hours (3-JDF-3C-11).  |   |   |   |   |   |
| 60. Written policy ensures the right of juveniles to have access to courts (3-JDF-3D-01).  |   |   |   |   |   |

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| 61. Written policy ensures and facilitates juvenile access to counsel and assists juveniles in making confidential contact with attorneys (3-JDF-3D-02).    |   |   |   |   |   |
| 62. Written policy protects juveniles from abuse, corporeal punishment, personal injury, disease, property damage, and harassment (3-JDF-3D-06).            |   |   |   |   |   |
| 63. A written grievance procedure is made available to all juveniles that includes at least one level of appeal (3-JDF-3D-08).                              |   |   |   |   |   |
| 64. Written policy provides special management for juveniles with serious behavior problems and for those requiring protective care (3-JDF-3E-01).          |   |   |   |   |   |
| 65. The facility administrator/shift supervisor can order immediate placement in a special location to protect juveniles from self or others (3-JDF-3E-02). |   |   |   |   |   |
| 66. The facility's sanctioning schedule sets a maximum of 5 days' disciplinary confinement for any offense, unless superseded by law (3-JDF-3E-03).         |   |   |   |   |   |
| 67. Juveniles placed in confinement are visually checked by staff every 15 minutes and are visited each day by the appropriate units (3-JDF-3E-04).         |   |   |   |   |   |
| 68. Written policy specifies that confined juveniles have living conditions and privileges similar to those for the general population (3-JDF-3E-05).       |   |   |   |   |   |
| <b>D. Facility Services (Part IV of JDF manual)</b>   | 1   | 2 | 3 | 4 | 5 |
| 69. It is documented that the facility's system of dietary allowances is reviewed at least monthly by a dietitian for proper compliance (3-JDF-4A-03).      |   |   |   |   |   |
| 70. Written policy requires that food service staff plan out menus and stick to them, taking into account food appearance and palatability (3-JDF-4A-04).   |   |   |   |   |   |
| 71. Written policy provides for specially prescribed diets (3-JDF-4A-06).   |   |   |   |   |   |
| <b>INS Secure Juvenile Standards Checklist</b>  | <b>Rating 1–5:</b><br>1=in compliance; 2=not in compliance;<br>3= exception noted; 4=staff information; 5=confirmed |   |   |   |   |
| <b>D. Facility Services—Cont. (Part IV of JDF manual)</b>   | 1   | 2 | 3 | 4 | 5 |
| 72. Written policy precludes the use of food as a disciplinary measure (3-JDF-4A-07).   |   |   |   |   |   |
| 73. Written policy specifies that food services comply with applicable sanitation and health codes (3-JDF-4A-09).   |   |   |   |   |   |
| 74. Shelved and refrigerated goods are maintained at the appropriate prescribed temperatures for each (3-JDF-4A-11).  |   |   |   |   |   |

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| 75. Written policy provides that staff members supervise juveniles during meals (3-JDF-4A-12).   |  |  |  |  |  |
| 76. Written policy requires 3 meals a day, 2 of them hot, at regular meal times, with fewer than 14 hours between dinner and breakfast (3-JDF-4A-13).    |  |  |  |  |  |
| 77. Written policy provides for adequate health protection for all juveniles and staff in the facility and working in food service (3-JDF-4A-14).        |  |  |  |  |  |
| 78. Written policy requires weekly sanitation inspections of all facility areas (3-JDF-4B-01).   |  |  |  |  |  |
| 79. The facility administration complies with applicable sanitation codes (3-JDF-4B-02).   |  |  |  |  |  |
| 80. An independent, outside source has approved the institution's potable water source and supply (3-JDF-4B-03).   |  |  |  |  |  |
| 81. The institution has an approved waste disposal system (3-JDF-4B-04).   |  |  |  |  |  |
| 82. Written policy provides for vermin and pest control (3-JDF-4B-05).   |  |  |  |  |  |
| 83. Written policy specifies accountability for clothing and bedding issued to juveniles (3-JDF-4B-08).  |  |  |  |  |  |
| 84. Juveniles are afforded 3 complete sets of clean clothing per week (3-JDF-4B-10).   |  |  |  |  |  |
| 85. Written policy requires the facility to thoroughly clean and disinfect, as necessary, juvenile personal clothing being stored or worn (3-JDF-4B-11). |  |  |  |  |  |
| 86. Written policy provides for the issue of complete clean bedding and linen sets, with sufficient blankets for temperature comfort (3-JDF-4B-12).      |  |  |  |  |  |
| 87. Written policy provides an approved shower schedule that allows daily showers and showers after strenuous exercise (3-JDF-4B-13).                    |  |  |  |  |  |
| 88. Written policy requires that all juveniles receive articles necessary for maintaining proper personal hygiene (3-JDF-4B-14).                         |  |  |  |  |  |
| 89. There are hair care services available to juveniles (3-JDF-4B-15).   |  |  |  |  |  |
| 90. Written policy provides that the facility has a contracted health authority with responsibility for health care (3-JDF-4C-01).                       |  |  |  |  |  |
| 91. Written policy provides that a staff member accompany a juvenile needing hospitalization at least through admission (3-JDF-4C-04).                   |  |  |  |  |  |
| 92. Adequate space, equipment, and supplies, as determined by the responsible physician, are provided for primary health care delivery (3-JDF-4C-06).    |  |  |  |  |  |
| 93. Written policy provides for unimpeded access to health care and for a system for processing health care complaints (3-JDF-4C-07).                    |  |  |  |  |  |
| 94. When sick call is not conducted by a physician, he/she is available once a week to answer juveniles' health care service complaints (3-JDF-4C-       |  |  |  |  |  |

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| 95. Juveniles' medical complaints are monitored and responded to daily by medically trained personnel (3-JDF-4C-09).                                    |  |  |  |  |  |
| 96. Appropriate state and federal licensure and registration requirements apply to personnel providing health care services to juveniles (3-JDF-4C-10). |  |  |  |  |  |

| <b>INS Secure Juvenile Standards Checklist</b>  | <b>Rating 1–5:</b><br>1=in compliance; 2=not in compliance;<br>3= exception noted; 4=staff information; 5=confirmed |   |   |   |   |
|---|---|---|---|---|---|
|   | 1   | 2 | 3 | 4 | 5 |
| <b>D. Facility Services—Cont. (Part IV of JDF manual)</b>   |   |   |   |   |   |
| 97. Written policy provides that treatment by other than licensed health care personnel is performed under a physician's orders (3-JDF-4C-11).  |   |   |   |   |   |
| 98. A juvenile's immunization history is obtained when the health appraisal data are collected; immunizations are updated, as required (3-JDF-4C-13).   |   |   |   |   |   |
| 99. Obstetrical, gynecological, family planning, and health education services are provided in facilities housing females (3-JDF-4C-14).  |   |   |   |   |   |
| 100. Written policy specifies the provision of mental health services for juveniles (3-JDF-4C-16).  |   |   |   |   |   |
| 101. When facilities lack full-time, qualified health-trained personnel, a trained staff member coordinates supervised health services (3-JDF-4C-17).   |   |   |   |   |   |
| 102. Written policy provides for the proper management of pharmaceuticals (3-JDF-4C-18).  |   |   |   |   |   |
| 103. Psychotropic drugs and drugs requiring parenteral administration are prescribed by a physician or provider, following an exam (3-JDF-4C-19).   |   |   |   |   |   |
| 104. The person administering medications has training from the responsible physician/official, is accountable for administering medications, and appropriately records their administration (3-JDF-4C-20). |   |   |   |   |   |
| 105. Written policy requires that all juveniles, upon arrival, receive thorough health screenings by qualified personnel (3-JDF-4C-21).   |   |   |   |   |   |
| 106. Written policy requires that all juveniles receive thorough health screenings upon their arrival from intrasystem transfers (3-JDF-4C-23).   |   |   |   |   |   |
| 107. Written policy provides for the collection and recording of health appraisal data in accordance with prescribed procedures (3-JDF-4C-24).  |   |   |   |   |   |
| 108. Written policy provides for 24-hour emergency health care availability as outlined in a detailed written plan (3-JDF-4C-26).   |   |   |   |   |   |

|  |   |   |   |   |   |
|--|---|---|---|---|---|
| 109. Written policy provides that personnel are trained to respond to health-related situations within 4 minutes (3-JDF-4C-27).                              |   |   |   |   |   |
| 110. Written policy requires that first aid kits are available (3-JDF-4C-28).  |   |   |   |   |   |
| 111. Sick call for nonemergency medical service by a physician or counterpart is available to each juvenile at least 3 times a week (3-JDF-4C-29).           |   |   |   |   |   |
| 112. Written policy provides for a special health program for juveniles requiring close medical supervision (3-JDF-4C-30).                                   |   |   |   |   |   |
| 113. Chronic care, convalescent care, and medical preventive maintenance are provided to juveniles when medically indicated (3-JDF-4C-31).                   |   |   |   |   |   |
| 114. There is a written agreement between the facility and a nearby hospital for all medical services that cannot be provided at the facility (3-JDF-4C-33). |   |   |   |   |   |
| 115. A written suicide and intervention program is reviewed and approved by a qualified medical or mental health professional (3-JDF-4C-35).                 |   |   |   |   |   |
| 116. Written policy specifies approved actions to be taken by employees concerning juveniles diagnosed as HIV positive (3-JDF-4C-36).                        |   |   |   |   |   |
| 117. Written policy addresses the management of serious and infectious diseases (3-JDF-4C-37).   |   |   |   |   |   |
| 118. Written policy provides for medical examination of any employee or juvenile believed to have a communicable disease (3-JDF-4C-38).                      |   |   |   |   |   |
| 119. Written policy prohibits using juveniles for medical, pharmaceutical, or cosmetic experiments (3-JDF-4C-43).  |   |   |   |   |   |
| 120. Stimulants, tranquilizers, or psychotropic drugs are never used for program management, control, experiment, or research purposes (3-JDF-4C-44).        |   |   |   |   |   |
| <b>INS Secure Juvenile Standards Checklist</b>   | <b>Rating 1–5:</b><br>1=in compliance; 2=not in compliance;<br>3= exception noted; 4=staff information; 5=confirmed |   |   |   |   |
| <b>D. Facility Services—Cont. (Part IV of JDF manual)</b>  | 1   | 2 | 3 | 4 | 5 |
| 121. Written policy provides that juveniles' parents/guardians are promptly notified in case of serious illness, surgery, injury, or death (3-JDF-4C-45).    |   |   |   |   |   |
| 122. Juveniles' health record files contain complete and proper records that are maintained in a manner approved by the health authority (3-JDF-4C-46).      |   |   |   |   |   |
| 123. Written policy upholds the principle of the health record's confidentiality, and supports particular requirements (3-JDF-4C-47).                        |   |   |   |   |   |
| 124. Summaries or copies of a juvenile transferee's medical history records are forwarded to the receiving facility before his or her arrival (3-JDF-4C-48). |   |   |   |   |   |
| <b>E. Juvenile Services (Part V of JDF Manual)</b>   | 1   | 2 | 3 | 4 | 5 |

|   |  |  |  |  |                    |
|---|--|--|--|--|--------------------|
| 125. Written procedures for admitting juveniles new to the system include all the required elements and steps (3-JDF-5A-02).                                    |  |  |  |  |                    |
| 126. Written policy provides that new juveniles receive written orientation materials and/or translations in their own language (3-JDF-5A-15).                  |  |  |  |  |                    |
| 127. Written policy governs the control and safeguarding of juvenile personal property (3-JDF-5A-16).   |  |  |  |  |                    |
| 128. Written policy provides that staff members are available to counsel juveniles at their request, even on an emergency basis (3-JDF-5B-04).                  |  |  |  |  |                    |
| 129. Written policy provides for juvenile access to mental health counseling and crisis intervention services, according to need (3-JDF-5B-05).                 |  |  |  |  |                    |
| 130. There is a comprehensive education program for juveniles (3-JDF-5C-01).  |  |  |  |  |                    |
| 131. The educational program is supported by specialized equipment that meets minimum state education standards (3-JDF-5C-03).                                  |  |  |  |  |                    |
| 132. Juveniles are not required to work for free except as part of facility upkeep, personal hygiene, or approved training or service program (3-JDF-5C-05).    |  |  |  |  |                    |
| 133. Juveniles are not permitted to perform any work prohibited by state and federal regulations and statutes pertaining to child labor (3-JDF-5C-06).          |  |  |  |  |                    |
| 134. Library services are provided and available to all juveniles (3-JDF-5D-03).  |  |  |  |  |                    |
| 135. Written policy provides a recreation-leisure plan that daily allows at least 1 hour each for large muscle and structured leisure activities (3-JDF-5E-04). |  |  |  |  |                    |
| 136. Written policy allows juveniles to practice the tenets of their religions, limited only by a documented threat to safety or order (3-JDF-5F-03).           |  |  |  |  |                    |
| 137. Written policy for juveniles' correspondence is made available to all staff and juveniles, is reviewed annually, and updated as needed (3-JDF-5G-01).      |  |  |  |  |                    |
| 138. There is no limit on the volume of letters a juvenile may send or receive, when he/she bears the mailing cost (3-JDF-5G-02).                               |  |  |  |  |                    |
| 139. Written policy provides that indigent juveniles, as defined in policy, receive a specified postage allowance to maintain community ties (3-JDF-5G-03).     |  |  |  |  |                    |
| 140. Written policy specifies that juveniles are permitted to send sealed letters to a specified class of persons and organizations (3-JDF-5G-04).              |  |  |  |  |                    |
| 141. Written policy grants juveniles the right to communicate/correspond freely, limited only by preservation of facility security and order (3-JDF-5G-05).     |  |  |  |  |                    |
| 142. Written policy provides that all juveniles' mail—incoming and outgoing—may be opened and inspected for contraband (3-JDF-5G-07).                           |  |  |  |  |                    |
| 143. Written policy requires that all cash received in the mail is held for the juvenile under procedures approved by the parent agency (3-JDF-5G-08).          |  |  |  |  |                    |
| 144. Written policy requires that incoming and outgoing letters are held for no more than 24 hours, and packages no more than 48 hours (3-JDF-5G-09).           |  |  |  |  |                    |
|   |  |  |  |  | <b>Rating 1–5:</b> |

| <b>INS Secure Juvenile Standards Checklist</b>  | <b>1=in compliance; 2=not in compliance;<br/>3= exception noted; 4=staff information; 5=confirmed</b> |          |          |          |          |
|---|---|----------|----------|----------|----------|
|   | <b>1</b>  | <b>2</b> | <b>3</b> | <b>4</b> | <b>5</b> |
| <b>E. Juvenile Services—Cont. (Part V of JDF manual)</b>  |   |          |          |          |          |
| 145. Written policy provides for the forwarding of first class letters and packages after transfer or release (3-JDF-5G-10).                            |   |          |          |          |          |
| 146. Written policy provides for juvenile access to the telephone to make and receive personal calls (3-JDF-5G-11).                                     |   |          |          |          |          |
| 147. Written policy grants juveniles the right to receive visits, limited only by the need to maintain facility order and security (3-JDF-5G-12).       |   |          |          |          |          |
| 148. Written policy provides that juvenile visiting facilities permit informal communication, including opportunity for physical contact (3-JDF-5G-13). |   |          |          |          |          |
| 149. Written policy governs special visits (3-JDF-5G-14).   |   |          |          |          |          |
| 150. Written policy specifies that visitors register on entry and states the circumstances governing visitor searches and supervision (3-JDF-5G-15).    |   |          |          |          |          |
| 151. Written procedures for releasing juveniles include several verification processes and other checks (3-JDF-5H-02).                                  |   |          |          |          |          |
| 152. Written policy provides for and governs escorted and unescorted day leaves into the community (3-JDF-5H-07).                                       |   |          |          |          |          |

## 6. Transportation Requirements

INS Officers transporting juveniles must adhere to the guidelines contained in the Flores Agreement, which are summarized below. For detailed standards governing the escorting of persons in INS custody, refer to the official guideline, "Enforcement Standard Escorts," released February 5, 1998. For detailed standards describing the policy for using restraints when transporting people in INS custody, refer to the INS guideline "Enforcement Standard, Use of Restraints," released February 5, 1998. General guidelines governing the transportation and transfer of juveniles are provided below.

### 6.1 Transportation and Transfer of Juveniles

6.1.1 Do not transport juveniles with detained adults unless:

- juveniles are being transported from the place of arrest or apprehension to an INS office; or
- separate transportation would be impractical (but then the juvenile must be kept separate, with precautions taken for his or her safety). Unaccompanied

juveniles will be separated from unrelated adult males by separate passenger compartments or by an empty row of seats.

6.1.2 Upon release, the INS will without undue delay assist juveniles in making transportation arrangements to the INS office nearest the person or facility they are being released to. The INS may, at its discretion, pay for or provide such transportation.

6.1.3 Juveniles must be transported with their legal papers and possessions unless possessions exceed the amount normally permitted by the carrier, in which case possessions must be shipped in a timely manner to the juvenile.

6.1.4 If a juvenile is represented by counsel, that counsel must be notified prior to transfer unless the safety of the juvenile is at issue, the juvenile is an escape risk, or counsel has waived notice. In any case, counsel must be notified within 24 hours following transfer.

6.1.5 Escorting Officers have the responsibility to determine the need and level of restraints used at any time while escorting a detainee. When an Officer determines that conditions warrant the use of restraints for members of a family unit, females, or juveniles, the Officer must be able to explain the conditions that require the restraints. Only the minimum degree of restraint needed to ensure the safety of the officer, the detainee, and the public, or to prevent escape, will be used. Females, juveniles, or family units traveling in unsecured vehicles will be placed in seat belts, and may be restrained as appropriate. Additional restraints beyond handcuffs are permitted in secured vehicles, based on explainable factors.

6.1.6 Regardless of whether restraints are used or the level of restraints, no juvenile will be transported without the assigned Officer conducting his or her own search of the juvenile for contraband.

## **6.2 Escorting Juveniles on JPATS and Commercial Aircraft**

6.2.1 JPATS. Juveniles transported on Justice Prisoner and Alien Transportation System (JPATS) aircraft and vehicles are subject to the policies and stipulations found in the JPATS Prisoner Transportation Manual. Officers should consult that reference for instructions regarding the use of escorts on JPATS aircraft.

6.2.2 If an escorted juvenile presents a risk to the escorts or the public, and a suitable itinerary using a third country that permits the use of restraints cannot be arranged, JPATS will be contacted to arrange for either a government or charter aircraft. If JPATS cannot accommodate the removal, HQ Field Operations will be contacted for guidance or authorization to use other means of transportation.

6.2.3 Commercial Aircraft. Personnel assigned to make reservations to transport juveniles on scheduled commercial aircraft will normally advise the airline(s) 1 day before the anticipated flight of the intent to transport a detainee under a law enforcement officer's control. Persons making reservations will notify the carrier or agent accepting the reservation of each traveler's escort classification. In



accordance with Federal Aviation Administration (FAA) regulations (14 C.F.R. 108), under no circumstances, exigent or otherwise, will this notification take place less than 1 hour prior to the flight.

6.2.4 In addition to properly assigning escorts according to the classification system in "Enforcement Standard, Escorts" (February 5, 1998), the following also applies when escorting juveniles on commercial aircraft:

- Criminal juveniles should be escorted consistent with the classification criteria for adults with the same background.
- Noncriminal juveniles may be escorted by certain designated non-INS personnel under contract or interagency agreement with the INS in place of INS Officers. Although escort by INS Officers is preferred, contract personnel may be used at the District Director's discretion.

Note: Agencies under contract or interagency agreement with the INS that are handling noncriminal juveniles do not have authority to restrain such juveniles. INS personnel will remove restraints prior to surrendering juveniles to such agencies. Detainees received from such agencies may be restrained by INS Officers according to policy.

- All FAA regulations pertaining to transporting "maximum risk" individuals in custody of law enforcement officers will be observed.
- When making travel arrangements, reasonable efforts must be made to observe individual airline policies regarding the transporting of detainees.
- There must be one escort of the same sex per juvenile.

### **6.3 Medical Escorts and Precautions Taken from Enforcement Standard, "Escorts," VI E-F, 2/5/98.o**

6.3.1 When a juvenile requires a medical escort, a medical professional will escort him or her with a minimum of two INS Officers. During transport, the medical escort will sit as close to the juvenile alien and INS escort officers as possible. At no time will the medical escort assume security responsibilities for the juvenile while in the air or on the ground.

6.3.2 Only a medical professional may provide juveniles with prescription medication for the treatment of diagnosed illnesses, e.g., heart ailments, depression, or other conditions. Under no circumstances will detainees be medicated solely to facilitate transport.<sup>9</sup> The medical escort is responsible for the disposition of medication and related equipment.

6.3.3 In all cases, juveniles will be accompanied by up-to-date copies of their medical records, which will be carried in a sealed envelope or folder, clearly marked "Medical Records, To Be Opened By Authorized Medical Personnel Only."

Detainees will be accompanied by medical supplies and medication sufficient for the trip, plus at least 3 days.

6.3.4 Do not transport detainees who have not been medically screened on commercial aircraft. Those transported on JPATS are subject to stipulations found in the JPATS Prisoner Transport Manual.

6.3.5 Officers should be alert for symptoms such as coughing, fever, sweating, and emaciation, in addition to obviously open wounds or bleeding. If an Officer suspects that a juvenile alien may be infected with a contagious disease, the following precautions should be taken:

- transport the juvenile in a separate vehicle from others;
- place a surgical mask on the juvenile;10 and
- seat the juvenile in the rear of the vehicle, next to an open window to provide as much ventilation as possible.

## **7. Legal Requirements-Representation**

This section clarifies attorney-client privileges and other items contained in the Flores Agreement.

### **7.1 Notice of Right to Bond Redetermination and Judicial Review of Placement**

7.1.1 Juveniles in removal proceedings under Section 240 of the Immigration and Naturalization Act will be afforded a bond redetermination hearing before an Immigration Judge, unless the juvenile refuses and indicates the refusal on the "Notice of Custody Determination" form.

Note: A juvenile may only be released to a qualified sponsor (see Section 2.4, "Release").

7.1.2 Juveniles not released under the above condition shall be provided the following:

- INS Form I-770;
- a list of free legal services providers compiled according to INS regulations (unless previously given to the juvenile); and
- a Notice of Right to Judicial Review (see Attachment 1, Flores Agreement, Exhibit 6).

Any juvenile who disagrees with the INS' placement decision (for facility) or who asserts that the licensed program does not meet the Minimum Standards for Licensed Programs (Exhibit 1 of Flores Agreement) may seek judicial review in Federal district court to challenge placement or allege noncompliance. The court will be limited to entering an order affecting only that juvenile.

## **7.2 Attorney-Client Visits Under Flores**

7.2.1 As plaintiff's counsel, staff attorneys from the Center for Human Rights and Constitutional Law, Los Angeles, California, or the National Center for Youth Law of San Francisco may visit juveniles if, prior to their visit, they show proper identification. Plaintiff's counsel must always provide a Notice of Appearance with the INS before any attorney-client meeting. This notice must be submitted to the Local INS or District Juvenile Coordinator by hand or mail, and to the facility by hand upon arrival. Other lawyers for the Flores plaintiff class may also visit juveniles if they are on the list of approved lawyers available from the District Juvenile Coordinator. (Every 6 months, plaintiff's counsel will provide the INS with a list of attorneys planning to make such visits during the following 6 months).Attorney-client visits shall be permitted in ALL INS and non-INS facilities.

7.2.2 All visits will take place according to the applicable policies and procedures for attorney-client visits at each individual facility. This provision does not limit visits by other attorneys.

7.2.3 The facility's staff must provide plaintiff's counsel, upon arrival, with a list of names and alien registration numbers for the juveniles housed at that facility.

7.2.4 The juvenile may refuse to meet with the attorney, and the juvenile's parents or legal guardian may deny plaintiff's counsel permission to meet the juvenile.

## **7.3 Attorney Visits to Licensed Facilities Under Flores**

7.3.1 Facility visits are to be conducted according to the generally accepted policies and procedures of the facility to the extent that those policies and procedures are consistent with Exhibit 4 of the Flores Agreement (Attachment 1) summarized below:The purpose of facility visits is to interview class members and staff and to observe conditions at the facility.

- Visits will be scheduled at least 7 business days in advance. Visitor names, positions, credentials, and professional associations must be provided at that time.
- All visits with class members must take place during normal business hours.
- No video recording equipment or cameras of any type shall be permitted.
- Audio recording equipment will be limited to hand-held tape recorders.
- Number of visitors will not exceed six; or for family foster homes, four-including interpreters. Up to two of these visitors may be non-attorney experts in juvenile justice and/or child welfare.

- Visit will not exceed 3 hours per day and will not disrupt the routine followed by the juveniles and staff.

7.3.2 Plaintiff's counsel may request access to any licensed facility or to any medium or secure facility. The request must be submitted by hand or by mail to the Local INS or District Juvenile Coordinator.

7.3.3 The District Juvenile Coordinator will provide reasonable assistance in conveying the request to the facility and coordinating the visit.

7.3.4 Plaintiff's counsel must treat juveniles and staff with respect and dignity, and the facility's normal functioning must not be disrupted.

#### **7.4 Attorney-Client Representation**

7.4.1 A Notice of Appearance of Attorney (INS Form G-28) must be on file for each juvenile represented by counsel and maintained in the juvenile's A-file.

7.4.2 Attorneys should be allowed reasonable access to all juveniles they represent.

7.4.3 The Arresting Officer must provide all juveniles with specific information regarding the availability of free legal assistance and advise each juvenile of the right to be represented by counsel at no expense to the government and of the right to a hearing before an Immigration Judge. This process is to be repeated by the Local or District Juvenile Coordinator upon the juvenile's placement in the facility.

7.4.4 Paralegals (individuals who work under the direction and supervision of an attorney to aid them in representing their clients) may interview juveniles, complete forms, and deliver papers without the attorney being present. The paralegal does not represent the juvenile before the INS. Each paralegal must present a letter from the employer/attorney identifying him or her and stating that s/he is employed and supervised by the attorney.

7.4.5 Messengers or other persons not certified as paralegals will be permitted only to deliver or convey documents, forms, etc., to and from the facility, and may not interview or come into contact with juveniles.

7.4.6 Attorneys representing juveniles in foster care have the same right of access to these clients as with any other juvenile client. The facility will provide juveniles with access to their attorneys or their representatives and will honor the privileged nature of the client/attorney contact, recognizing that appointments are to be at times mutually agreed upon by the juvenile and the foster parent.

7.4.7 Juvenile facilities shall have established visiting hours that allow attorneys ample opportunity to meet with their clients. However, the hours shall not compromise security or unduly interfere with the normal and necessary routines of

the program. Facilities must provide space that allows confidentiality between attorneys and clients.

7.4.8 Facility staff may visually observe all conversations between juveniles and their attorneys but may not in any way record or listen to conversations.

## **8. Escapes and Other Emergency Incidents**

### **8.1 Juvenile Escapes**

Dealing with escapes is a critical issue for anyone with responsibility for juvenile aliens being detained by the INS in secure or nonsecure facilities. It is therefore important to learn and follow the procedures outlined in this chapter to fulfill all aspects of your prescribed role, whether you are acting as a Regional or District Juvenile Coordinator, INS Officer, or Headquarters personnel. All escapes will be treated in the same manner, regardless of who had custody of the alien at the time of the escape.p Memo from William R. Yates, Eastern Regional Director, on "Escape Reporting Procedures," 8/3/98.p First and foremost, when an escape occurs, immediate efforts should be made to locate the juvenile alien.

8.1.1 The District Juvenile Coordinator must ensure that facility staff know what to do when a juvenile absconds from a facility (medium or secure detention, shelter care, group home, or foster care). The staff person reporting the unauthorized absence must call the local INS Office and local law enforcement authorities and provide the following information:

- physical description of juvenile;
- name and alien registration number of juvenile;
- time of incident;
- what occurred;
- any calls or other contacts;
- name, address, and phone number of family;
- information regarding unusual behavior; and
- any reasons to believe that the departure was involuntary.

The District Juvenile Coordinator notifies the attorney of record and the Regional Juvenile Coordinator. In addition, the District Juvenile Coordinator should verify that local law enforcement has been notified and that all the above information was provided.

8.1.2 When a juvenile absconds from a facility (medium or secure detention, shelter care, group home, or foster care), the local INS Office should handle the matter as a reportable "incident," and the Supervisor involved should telephone the respective Regional Juvenile Coordinator in DDP and the INS Command Center within 24 hours of discovery of the escape. All escapes involving juveniles must also be reported to the National Juvenile Coordinator at HQOPS. The following then

occurs: The regional office assigns an escape number. All future correspondence about the escape will reference the assigned escape report number.

8.1.3 To start the escape investigation, the District Director or Chief Patrol Agent will determine which section (e.g., INV, DDP, etc.) will conduct the inquiry. While the extent of the investigation will depend on the nature of the escape, it must include the following:

- the cause of the escape;
- whether proper custody procedures were followed;
- what law enforcement authorities were notified;
- what attempts were made to apprehend the alien; and
- recommendation for corrective or disciplinary action, if necessary.

8.1.4 If the Investigating Officer determines the escape to be a result of complicity with the escorting officer or contract guard, or if evidence exists of legal impropriety, the Office of the Inspector General must be notified and the report so noted.<sup>11</sup>

8.1.5 In the case of a juvenile escape from INS custody following arrest or conviction for a criminal violation-whether felonious or misdemeanor and/or before the sentence is up (if the juvenile alien is paroled)-report the escape to the nearest office of the U.S. Marshals Service within 1 hour of the discovery. A detailed report must be submitted to the Regional Juvenile Coordinator or his or her designee in DDP and to the Regional Director within 48 hours.

8.1.6 The Investigating Officer must prepare a full written report on the escape, which will include the results of the investigation, along with the following:<sup>q</sup> This information on required report content is taken from a 5/25/82 memo from J.F. Salgado, Associate Commissioner, Enforcement, on "Escape Analysis and Reporting Procedures."<sup>q</sup>

- Memoranda detailing the escape from the officers or contract guards involved.
- Memoranda of review by the District Director or Chief Patrol Agent, including any interview reviews by first or second line supervisors. In each case, the District Director or Chief Patrol Agent will determine whether the proper procedures were observed and if disciplinary action or further investigation is warranted. Any remedial action taken by those field officials will be spelled out.
- A transmittal memo from the Regional Office of Enforcement to HQDDP via HQENF, setting forth agreement or disagreement with actions taken.

Normally, the completed written report should be transmitted from the Regional Office of Enforcement to Headquarters within 30 days of the escape. If any ongoing investigation precludes meeting that timetable, an interim report shall be forwarded with appropriate explanation.

8.1.7 Any juvenile who is apprehended after escaping from a foster care home, shelter, or any other INS custody will be placed in a secure juvenile detention facility. From a 12/4/95 memo, "Instructions for the Detention, Placement, and Release of Chinese Juveniles," to Regional and District Directors, from the Office of Deputy Commissioner. All INS field offices must devote the needed resources to investigate and follow up on all leads in a timely manner.

8.1.8 In cases of escape by Chinese or Indian juvenile aliens from secure or nonsecure facilities, the steps outlined above must be followed. In addition, the procedures found in Section 3, "Special Issues and Special Populations," must also be followed.

## **8.2 Proceeding with Removal Hearings**

8.2.1 For juveniles who have escaped, the removal hearing should proceed and an Order in Abstentia obtained that is consistent with the requirements of Section 242B(c) of the Immigration and Nationality Act. From a 10/4/95 telegraphic message from Joan Higgins, Assistant Commissioner, Detention and Deportation.

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## **9. Medical Issues**

### **9.1 Required Medical and Health-Related Services**

9.1.1 According to the Flores Agreement, all facilities used by the INS must provide appropriate routine medical and dental care, family planning services, and emergency health care services, including a complete medical examination within 48 hours of admission. This requirement excludes weekends and holidays, unless the juvenile was recently examined at another facility. The medical examination should include, at minimum, the following:

- screening for infectious diseases;
- appropriate immunizations in accordance with the U.S. Public Health Service Center for Disease Control;
- administration of prescribed medications and special diets; and
- appropriate mental health interventions when necessary.

9.1.2 Refer to Section 5 of this manual, "Inspection Standards for Juvenile Shelter Care and Secure Juvenile Detention Facilities," for a thorough discussion of medical and health-related services requirements-for both juvenile shelter care and medium-secure/secure detention facilities.

## **ATTACHMENTS**

### **Attachment 1 Jenny Lisette Flores, et al. v. Janet Reno**

Jenny Lisette Flores, et al.  
v.  
Janet Reno

Stipulated Settlement Agreement

8/12/96  
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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA





|                                      |             |                                    |
|--------------------------------------|-------------|------------------------------------|
| <b>JENNY LISETTE FLORES, et al.,</b> | )           | <b>Case No. CV 85-4544-RJK(Px)</b> |
|                                      | )           |                                    |
| <b>Plaintiffs,</b>                   | )           | <b>Stipulated Settlement</b>       |
|                                      | )           | <b>Agreement</b>                   |
|                                      | <b>v.</b> ) |                                    |
| <b>JANET RENO, Attorney General</b>  | )           |                                    |
| <b>of the United States, et al.,</b> | )           |                                    |
|                                      | )           |                                    |
| <b>Defendants.</b>                   | )           |                                    |
|                                      | )           |                                    |
|                                      | )           |                                    |

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**STIPULATED SETTLEMENT AGREEMENT**

WHEREAS, Plaintiffs have filed this action against Defendants, challenging, inter alia, the constitutionality of Defendants' policies, practices and regulations regarding the detention and release of unaccompanied minors taken into the custody of the Immigration and Naturalization Service (INS) in the Western Region; and

WHEREAS, the district court has certified this case as a class action on behalf of all minors apprehended by the INS in the Western Region of the United States; and

WHEREAS, this litigation has been pending for nine (9) years, all parties have conducted extensive discovery, and the United States Supreme Court has upheld the constitutionality of the challenged INS regulations on their face and has remanded for further proceedings consistent with its opinion; and

WHEREAS, on November 30, 1987, the parties reached a settlement agreement requiring that minors in INS custody in the Western Region be housed in facilities meeting certain standards, including state standards for the housing and care of dependent children, and Plaintiffs' motion to enforce compliance with that settlement is currently pending before the court; and

WHEREAS, a trial in this case would be complex, lengthy and costly to all parties concerned, and the decision of the district court would be subject to appeal by the losing parties with the final outcome uncertain; and

WHEREAS, the parties believe that settlement of this action is in their best interests and best serves the interests of justice by avoiding a complex, lengthy and costly trial, and subsequent appeals, which could last several more years;

NOW, THEREFORE, Plaintiffs and Defendants enter into this Stipulated Settlement Agreement (the Agreement), stipulate that it constitutes a full and complete resolution of the issues raised in this action, and agree to the following:

## I DEFINITIONS

As used throughout this Agreement, the following definitions shall apply:

1. The term "party" or "parties" shall apply to Defendants and Plaintiffs. As the term applies to Defendants, it shall include their agents, employees, contractors and/or successors in office. As the term applies to Plaintiffs, it shall include all class members.

2. The term "Plaintiff" or "Plaintiffs" shall apply to the named plaintiffs and all class members.

3. The term "class member" or "class members" shall apply to the persons defined in Paragraph 10 below.

4. The term "minor" shall apply to any person under the age of eighteen (18) years who is detained in the legal custody of the INS. This Agreement shall cease to apply to any person who has reached the age of eighteen years. The term "minor" shall not include an emancipated minor or an individual who has been incarcerated due to a conviction for a criminal offense as an adult. The INS shall treat all persons who are under the age of eighteen but not included within the definition of "minor" as adults for all purposes, including release on bond or recognizance.

5. The term "emancipated minor" shall refer to any minor who has been determined to be emancipated in an appropriate state judicial proceeding.

6. The term "licensed program" shall refer to any program, agency or organization that is licensed by an appropriate State agency to provide residential, group, or foster care services for dependent children, including a program operating group homes, foster homes, or facilities for special needs minors. A licensed program must also meet those standards for licensed programs set forth in Exhibit 1 attached hereto. All homes and facilities operated by licensed programs, including facilities for special needs minors, shall be non-secure as required under state law; provided, however, that a facility for special needs minors may maintain that level of security permitted under state law which is necessary for the protection of a minor or others

in appropriate circumstances, e.g., cases in which a minor has drug or alcohol problems or is mentally ill. The INS shall make reasonable efforts to provide licensed placements in those geographical areas where the majority of minors are apprehended, such as southern California, southeast Texas, southern Florida and the northeast corridor.

7. The term "special needs minor" shall refer to a minor whose mental and/or physical condition requires special services and treatment by staff. A minor may have special needs due to drug or alcohol abuse, serious emotional disturbance, mental illness or retardation, or a physical condition or chronic illness that requires special services or treatment. A minor who has suffered serious neglect or abuse may be considered a minor with special needs if the minor requires special services or treatment as a result of the neglect or abuse. The INS shall assess minors to determine if they have special needs and, if so, shall place such minors, whenever possible, in licensed programs in which the INS places children without special needs, but which provide services and treatment for such special needs.

8. The term "medium security facility" shall refer to a facility that is operated by a program, agency or organization licensed by an appropriate State agency and that meets those standards set forth in Exhibit 1 attached hereto. A medium security facility is designed for minors who require close supervision but do not need placement in juvenile correctional facilities. It provides 24-hour awake supervision, custody, care, and treatment. It maintains stricter security measures, such as intensive staff supervision, than a facility operated by a licensed program in order to control problem behavior and to prevent escape. Such a facility may have a secure perimeter but shall not be equipped internally with major restraining construction or procedures typically associated with correctional facilities.

## II SCOPE OF SETTLEMENT, EFFECTIVE DATE, AND PUBLICATION

9. This Agreement sets out nationwide policy for the detention, release, and treatment of minors in the custody of the INS and shall supersede all previous INS policies that are inconsistent with the terms of this Agreement. This Agreement shall become effective upon final court approval, except that those terms of this Agreement regarding placement pursuant to Paragraph 19 shall not become effective until all contracts under the Program Announcement referenced in Paragraph 20 below are negotiated and implemented. The INS shall make its best efforts to execute these contracts within 120 days after the court's final approval of this Agreement. However, the INS will make reasonable efforts to comply with Paragraph 19 prior to full implementation of all such contracts. Once all contracts under the Program Announcement referenced in Paragraph 20 have been implemented, this Agreement shall supersede the agreement entitled Memorandum of Understanding Re: Compromise of Class Action: Conditions of Detention (hereinafter "MOU"), entered into by and between the Plaintiffs and Defendants and filed with the United States District Court for the Central District of California on November 30, 1987, and the MOU shall thereafter be null and void. However, Plaintiffs shall not institute any legal action for enforcement of the MOU for a six (6) month period commencing with the final district court approval of this Agreement, except that Plaintiffs may institute enforcement proceedings if the Defendants have engaged in serious violations of the MOU that have caused irreparable harm to a class member for which injunctive relief would be appropriate. Within 120 days of the final district court approval of this Agreement, the INS shall initiate action to publish

the relevant and substantive terms of this Agreement as a Service regulation. The final regulations shall not be inconsistent with the terms of this Agreement. Within 30 days of final court approval of this Agreement, the INS shall distribute to all INS field offices and sub-offices instructions regarding the processing, treatment, and placement of juveniles. Those instructions shall include, but may not be limited to, the provisions summarizing the terms of this Agreement, attached hereto as Exhibit 2.

#### CLASS DEFINITION

10. The certified class in this action shall be defined as follows: "All minors who are detained in the legal custody of the INS."

#### IV STATEMENTS OF GENERAL APPLICABILITY

11. The INS treats, and shall continue to treat, all minors in its custody with dignity, respect and special concern for their particular vulnerability as minors. The INS shall place each detained minor in the least restrictive setting appropriate to the minor's age and special needs, provided that such setting is consistent with its interests to ensure the minor's timely appearance before the INS and the immigration courts and to protect the minor's well-being and that of others. Nothing herein shall require the INS to release a minor to any person or agency whom the INS has reason to believe may harm or neglect the minor or fail to present him or her before the INS or the immigration courts when requested to do so.

#### V PROCEDURES AND TEMPORARY PLACEMENT FOLLOWING ARREST

12.A. Whenever the INS takes a minor into custody, it shall expeditiously process the minor and shall provide the minor with a notice of rights, including the right to a bond redetermination hearing if applicable. Following arrest, the INS shall hold minors in facilities that are safe and sanitary and that are consistent with the INS' concern for the particular vulnerability of minors. Facilities will provide access to toilets and sinks, drinking water and food as appropriate, medical assistance if the minor is in need of emergency services, adequate temperature control and ventilation, adequate supervision to protect minors from others, and contact with family members who were arrested with the minor. The INS will segregate unaccompanied minors from unrelated adults. Where such segregation is not immediately possible, an unaccompanied minor will not be detained with an unrelated adult for more than 24 hours. If there is no one to whom the INS may release the minor pursuant to Paragraph 14, and no appropriate licensed program is immediately available for placement pursuant to Paragraph 19, the minor may be placed in an INS detention facility, or other INS-contracted facility, having separate accommodations for minors, or a State or county juvenile detention facility. However, minors shall be separated from delinquent offenders. Every effort must be taken to ensure that the safety and well-being of the minors detained in these facilities are satisfactorily provided for by the staff. The INS will transfer a minor from a placement under this paragraph to a placement under Paragraph 19, (i) within three (3) days, if the minor was apprehended in an INS district in which a licensed program is located and has space available; or (ii) within five (5) days in all other cases; except:

1. as otherwise provided under Paragraph 13 or Paragraph 21;
2. as otherwise required by any court decree or court-approved settlement;

3. in the event of an emergency or influx of minors into the United States, in which case the INS shall place all minors pursuant to Paragraph 19 as expeditiously as possible; or

4. where individuals must be transported from remote areas for processing or speak unusual languages such that the INS must locate interpreters in order to complete processing, in which case the INS shall place all such minors pursuant to Paragraph 19 within five (5) business days.

B. For purposes of this paragraph, the term "emergency" shall be defined as any act or event that prevents the placement of minors pursuant to Paragraph 19 within the time frame provided. Such emergencies include natural disasters (e.g., earthquakes, hurricanes, etc.), facility fires, civil disturbances, and medical emergencies (e.g., a chicken pox epidemic among a group of minors). The term "influx of minors into the United States" shall be defined as those circumstances where the INS has, at any given time, more than 130 minors eligible for placement in a licensed program under Paragraph 19, including those who have been so placed or are awaiting such placement.

C. In preparation for an "emergency" or "influx," as described in Subparagraph B, the INS shall have a written plan that describes the reasonable efforts that it will take to place all minors as expeditiously as possible. This plan shall include the identification of 80 beds that are potentially available for INS placements and that are licensed by an appropriate State agency to provide residential, group, or foster care services for dependent children. The plan, without identification of the additional beds available, is attached as Exhibit 3. The INS shall not be obligated to fund these additional beds on an ongoing basis. The INS shall update this listing of additional beds on a quarterly basis and provide Plaintiffs' counsel with a copy of this listing.

13. If a reasonable person would conclude that an alien detained by the INS is an adult despite his claims to be a minor, the INS shall treat the person as an adult for all purposes, including confinement and release on bond or recognizance. The INS may require the alien to submit to a medical or dental examination conducted by a medical professional or to submit to other appropriate procedures to verify his or her age. If the INS subsequently determines that such an individual is a minor, he or she will be treated as a minor in accordance with this Agreement for all purposes.

## VI GENERAL POLICY FAVORING RELEASE

14. Where the INS determines that the detention of the minor is not required either to secure his or her timely appearance before the INS or the immigration court, or to ensure the minor's safety or that of others, the INS shall release a minor from its custody without unnecessary delay, in the following order of preference, to:

- A. a parent;
- B. a legal guardian;
- C. an adult relative (brother, sister, aunt, uncle, or grandparent);
- D. an adult individual or entity designated by the parent or legal guardian as capable and willing to care for the minor's well-being in (i) a declaration signed under penalty of perjury before an immigration or consular officer or (ii) such other document(s) that establish(es) to the satisfaction of the INS, in its discretion, the affiant's paternity or guardianship;
- E. a licensed program willing to accept legal custody; or

F. an adult individual or entity seeking custody, in the discretion of the INS, when it appears that there is no other likely alternative to long term detention and family reunification does not appear to be a reasonable possibility.

15. Before a minor is released from INS custody pursuant to Paragraph 14 above, the custodian must execute an Affidavit of Support (Form I-134) and an agreement to:

- A. provide for the minor's physical, mental, and financial well-being;
- B. ensure the minor's presence at all future proceedings before the INS and the immigration court;
- C. notify the INS of any change of address within five (5) days following a move;
- D. in the case of custodians other than parents or legal guardians, not transfer custody of the minor to another party without the prior written permission of the District Director;
- E. notify the INS at least five days prior to the custodian's departing the United States of such departure, whether the departure is voluntary or pursuant to a grant of voluntary departure or order of removal; and
- F. if dependency proceedings involving the minor are initiated, notify the INS of the initiation of such proceedings and the dependency court of any immigration proceedings pending against the minor.

In the event of an emergency, a custodian may transfer temporary physical custody of a minor prior to securing permission from the INS but shall notify the INS of the transfer as soon as is practicable thereafter, but in all cases within 72 hours. For purposes of this paragraph, examples of an "emergency" shall include the serious illness of the custodian, destruction of the home, etc. In all cases where the custodian, in writing, seeks written permission for a transfer, the District Director shall promptly respond to the request.

16. The INS may terminate the custody arrangements and assume legal custody of any minor whose custodian fails to comply with the agreement required under Paragraph 15. The INS, however, shall not terminate the custody arrangements for minor violations of that part of the custodial agreement outlined at Subparagraph 15.C above.

17. A positive suitability assessment may be required prior to release to any individual or program pursuant to Paragraph 14. A suitability assessment may include such components as an investigation of the living conditions in which the minor would be placed and the standard of care he would receive, verification of identity and employment of the individuals offering support, interviews of members of the household, and a home visit. Any such assessment should also take into consideration the wishes and concerns of the minor.

18. Upon taking a minor into custody, the INS, or the licensed program in which the minor is placed, shall make and record the prompt and continuous efforts on its part toward family reunification and the release of the minor pursuant to Paragraph 14 above. Such efforts at family reunification shall continue so long as the minor is in INS custody.

## VII INS CUSTODY

19. In any case in which the INS does not release a minor pursuant to Paragraph 14, the minor shall remain in INS legal custody. Except as provided in Paragraphs 12 or 21, such minor shall be placed temporarily in a licensed program until such

time as release can be effected in accordance with Paragraph 14 above or until the minor's immigration proceedings are concluded, whichever occurs earlier. All minors placed in such a licensed program remain in the legal custody of the INS and may only be transferred or released under the authority of the INS; provided, however, that in the event of an emergency a licensed program may transfer temporary physical custody of a minor prior to securing permission from the INS but shall notify the INS of the transfer as soon as is practicable thereafter, but in all cases within 8 hours.

20. Within 60 days of final court approval of this Agreement, the INS shall authorize the United States Department of Justice Community Relations Service to publish in the Commerce Business Daily and/or the Federal Register a Program Announcement to solicit proposals for the care of 100 minors in licensed programs.

21. A minor may be held in or transferred to a suitable State or county juvenile detention facility or a secure INS detention facility, or INS-contracted facility, having separate accommodations for minors whenever the District Director or Chief Patrol Agent determines that the minor:

A. has been charged with, is chargeable, or has been convicted of a crime, or is the subject of delinquency proceedings, has been adjudicated delinquent, or is chargeable with a delinquent act; provided, however, that this provision shall not apply to any minor whose offense(s) fall(s) within either of the following categories:

- i. Isolated offenses that (1) were not within a pattern or practice of criminal activity and (2) did not involve violence against a person or the use or carrying of a weapon (Examples: breaking and entering, vandalism, DUI, etc. This list is not exhaustive.);
- ii. Petty offenses, which are not considered grounds for stricter means of detention in any case (Examples: shoplifting, joy riding, disturbing the peace, etc. This list is not exhaustive.);

As used in this paragraph, "chargeable" means that the INS has probable cause to believe that the individual has committed a specified offense;

B. has committed, or has made credible threats to commit, a violent or malicious act (whether directed at himself or others) while in INS legal custody or while in the presence of an INS officer;

C. has engaged, while in a licensed program, in conduct that has proven to be unacceptably disruptive of the normal functioning of the licensed program in which he or she has been placed and removal is necessary to ensure the welfare of the minor or others, as determined by the staff of the licensed program (Examples: drug or alcohol abuse, stealing, fighting, intimidation of others, etc. This list is not exhaustive.);

D. is an escape-risk; or

E. must be held in a secure facility for his or her own safety, such as when the INS has reason to believe that a smuggler would abduct or coerce a particular minor to secure payment of smuggling fees.

22. The term "escape-risk" means that there is a serious risk that the minor will attempt to escape from custody. Factors to consider when determining whether a minor is an escape-risk or not include, but are not limited to, whether:

A. the minor is currently under a final order of removal or exclusion;

B. the minor's immigration history includes: a prior breach of a bond; a failure to appear before the INS or the immigration court; evidence that the minor is indebted

to organized smugglers for his transport; or a voluntary departure or a previous removal from the United States pursuant to a final order of removal or exclusion;

C. the minor has previously absconded or attempted to abscond from INS custody.

23. The INS will not place a minor in a secure facility pursuant to Paragraph 21 if there are less restrictive alternatives that are available and appropriate in the circumstances, such as transfer to (a) a medium security facility which would provide intensive staff supervision and counseling services or (b) another licensed program. All determinations to place a minor in a secure facility will be reviewed and approved by the regional juvenile coordinator.

24.A. A minor in removal proceedings shall be afforded a bond redetermination hearing before an immigration judge in every case, unless the minor indicates on the Notice of Custody Determination form that he or she refuses such a hearing.

B. Any minor who disagrees with the INS' determination to place that minor in a particular type of facility, or who asserts that the licensed program in which he or she has been placed does not comply with the standards set forth in Exhibit 1 attached hereto, may seek judicial review in any United States District Court with jurisdiction and venue over the matter to challenge that placement determination or to allege noncompliance with the standards set forth in Exhibit 1. In such an action, the United States District Court shall be limited to entering an order solely affecting the individual claims of the minor bringing the action.

C. In order to permit judicial review of Defendants' placement decisions as provided in this Agreement, Defendants shall provide minors not placed in licensed programs with a notice of the reasons for housing the minor in a detention or medium security facility. With respect to placement decisions reviewed under this paragraph, the standard of review for the INS' exercise of its discretion shall be the abuse of discretion standard of review. With respect to all other matters for which this paragraph provides judicial review, the standard of review shall be de novo review.

D. The INS shall promptly provide each minor not released with (a) INS Form I-770, (b) an explanation of the right of judicial review as set out in Exhibit 6, and (c) the list of free legal services available in the district pursuant to INS regulations (unless previously given to the minor).

E. Exhausting the procedures established in Paragraph 37 of this Agreement shall not be a precondition to the bringing of an action under this paragraph in any United District Court. Prior to initiating any such action, however, the minor and/or the minors' attorney shall confer telephonically or in person with the United States Attorney's office in the judicial district where the action is to be filed, in an effort to informally resolve the minor's complaints without the need of federal court intervention.

## VIII TRANSPORTATION OF MINORS

25. Unaccompanied minors arrested or taken into custody by the INS should not be transported by the INS in vehicles with detained adults except:

A. when being transported from the place of arrest or apprehension to an INS office, or

B. where separate transportation would be otherwise impractical.



When transported together pursuant to Clause B, minors shall be separated from adults. The INS shall take necessary precautions for the protection of the well-being of such minors when transported with adults.

26. The INS shall assist without undue delay in making transportation arrangements to the INS office nearest the location of the person or facility to whom a minor is to be released pursuant to Paragraph 14. The INS may, in its discretion, provide transportation to minors.

## IX TRANSFER OF MINORS

27. Whenever a minor is transferred from one placement to another, the minor shall be transferred with all of his or her possessions and legal papers; provided, however, that if the minor's possessions exceed the amount permitted normally by the carrier in use, the possessions will be shipped to the minor in a timely manner. No minor who is represented by counsel shall be transferred without advance notice to such counsel, except in unusual and compelling circumstances such as where the safety of the minor or others is threatened or the minor has been determined to be an escape-risk, or where counsel has waived such notice, in which cases notice shall be provided to counsel within 24 hours following transfer.

## X MONITORING AND REPORTS

28A. An INS Juvenile Coordinator in the Office of the Assistant Commissioner for Detention and Deportation shall monitor compliance with the terms of this Agreement and shall maintain an up-to-date record of all minors who are placed in proceedings and remain in INS custody for longer than 72 hours. Statistical information on such minors shall be collected weekly from all INS district offices and Border Patrol stations. Statistical information will include at least the following: (1) biographical information such as each minor's name, date of birth, and country of birth, (2) date placed in INS custody, (3) each date placed, removed or released, (4) to whom and where placed, transferred, removed or released, (5) immigration status, and (6) hearing dates. The INS, through the Juvenile Coordinator, shall also collect information regarding the reasons for every placement of a minor in a detention facility or medium security facility.

B. Should Plaintiffs' counsel have reasonable cause to believe that a minor in INS legal custody should have been released pursuant to Paragraph 14, Plaintiffs' counsel may contact the Juvenile Coordinator to request that the Coordinator investigate the case and inform Plaintiffs' counsel of the reasons why the minor has not been released.

29. On a semi-annual basis, until two years after the court determines, pursuant to Paragraph 31, that the INS has achieved substantial compliance with the terms of this Agreement, the INS shall provide to Plaintiffs' counsel the information collected pursuant to Paragraph 28, as permitted by law, and each INS policy or instruction issued to INS employees regarding the implementation of this Agreement. In addition, Plaintiffs' counsel shall have the opportunity to submit questions, on a semi-annual basis, to the Juvenile Coordinator in the Office of the Assistant Commissioner for Detention and Deportation with regard to the implementation of this Agreement and the information provided to Plaintiffs' counsel during the preceding six-month period pursuant to Paragraph 28. Plaintiffs' counsel shall present such questions

either orally or in writing, at the option of the Juvenile Coordinator. The Juvenile Coordinator shall furnish responses, either orally or in writing at the option of Plaintiffs' counsel, within 30 days of receipt.

30. On an annual basis, commencing one year after final court approval of this Agreement, the INS Juvenile Coordinator shall review, assess, and report to the court regarding compliance with the terms of this Agreement. The Coordinator shall file these reports with the court and provide copies to the parties, including the final report referenced in Paragraph 35, so that they can submit comments on the report to the court. In each report, the Coordinator shall state to the court whether or not the INS is in substantial compliance with the terms of this Agreement, and, if the INS is not in substantial compliance, explain the reasons for the lack of compliance. The Coordinator shall continue to report on an annual basis until three years after the court determines that the INS has achieved substantial compliance with the terms of this Agreement.

31. One year after the court's approval of this Agreement, the Defendants may ask the court to determine whether the INS has achieved substantial compliance with the terms of this Agreement.

## XI ATTORNEY-CLIENT VISITS

32.A. Plaintiffs' counsel are entitled to attorney-client visits with class members even though they may not have the names of class members who are housed at a particular location. All visits shall occur in accordance with generally applicable policies and procedures relating to attorney-client visits at the facility in question. Upon Plaintiffs' counsel's arrival at a facility for attorney-client visits, the facility staff shall provide Plaintiffs' counsel with a list of names and alien registration numbers for the minors housed at that facility. In all instances, in order to memorialize any visit to a minor by Plaintiffs' counsel, Plaintiffs' counsel must file a notice of appearance with the INS prior to any attorney-client meeting. Plaintiffs' counsel may limit any such notice of appearance to representation of the minor in connection with this Agreement. Plaintiffs' counsel must submit a copy of the notice of appearance by hand or by mail to the local INS juvenile coordinator and a copy by hand to the staff of the facility.

B. Every six months, Plaintiffs' counsel shall provide the INS with a list of those attorneys who may make such attorney-client visits, as Plaintiffs' counsel, to minors during the following six month period. Attorney-client visits may also be conducted by any staff attorney employed by the Center for Human Rights & Constitutional Law in Los Angeles, California or the National Center for Youth Law in San Francisco, California, provided that such attorney presents credentials establishing his or her employment prior to any visit.

C. Agreements for the placement of minors in non-INS facilities shall permit attorney-client visits, including by class counsel in this case.

D. Nothing in Paragraph 32 shall affect a minor's right to refuse to meet with Plaintiffs' counsel. Further, the minor's parent or legal guardian may deny Plaintiffs' counsel permission to meet with the minor.

## XII FACILITY VISITS

33. In addition to the attorney-client visits permitted pursuant to Paragraph 32, Plaintiffs' counsel may request access to any licensed program's facility in which a

minor has been placed pursuant to Paragraph 19 or to any medium security facility or detention facility in which a minor has been placed pursuant to Paragraphs 21 or 23. Plaintiffs' counsel shall submit a request to visit a facility under this paragraph to the INS district juvenile coordinator who will provide reasonable assistance to Plaintiffs' counsel by conveying the request to the facility's staff and coordinating the visit. The rules and procedures to be followed in connection with any visit approved by a facility under this paragraph are set forth in Exhibit 4 attached, except as may be otherwise agreed by Plaintiffs' counsel and the facility's staff. In all visits to any facility pursuant to this Agreement, Plaintiffs' counsel and their associated experts shall treat minors and staff with courtesy and dignity and shall not disrupt the normal functioning of the facility.

### XIII TRAINING

34. Within 120 days of final court approval of this Agreement, the INS shall provide appropriate guidance and training for designated INS employees regarding the terms of this Agreement. The INS shall develop written and/or audio or video materials for such training. Copies of such written and/or audio or video training materials shall be made available to Plaintiffs' counsel when such training materials are sent to the field, or to the extent practicable, prior to that time.

### XIV DISMISSAL

35. After the court has determined that the INS is in substantial compliance with this Agreement and the Coordinator has filed a final report, the court, without further notice, shall dismiss this action. Until such dismissal, the court shall retain jurisdiction over this action.

### XV RESERVATION OF RIGHTS

36. Nothing in this Agreement shall limit the rights, if any, of individual class members to preserve issues for judicial review in the appeal of an individual case or for class members to exercise any independent rights they may otherwise have.

### XVI NOTICE AND DISPUTE RESOLUTION

37. This paragraph provides for the enforcement, in this District Court, of the provisions of this Agreement except for claims brought under Paragraph 24. The parties shall meet telephonically or in person to discuss a complete or partial repudiation of this Agreement or any alleged non-compliance with the terms of the Agreement, prior to bringing any individual or class action to enforce this Agreement. Notice of a claim that a party has violated the terms of this Agreement shall be served on plaintiffs addressed to:

CENTER FOR HUMAN RIGHTS & CONSTITUTIONAL LAW  
Carlos Holguín  
Peter A. Schey  
256 South Occidental Boulevard  
Los Angeles, CA 90057

NATIONAL CENTER FOR YOUTH LAW

Alice Bussiere  
James Morales  
114 Sansome Street, Suite 905  
San Francisco, CA 94104

and on Defendants addressed to:

Michael Johnson  
Assistant United States Attorney  
300 N. Los Angeles St., Rm. 7516  
Los Angeles, CA 90012

Allen Hausman  
Office of Immigration Litigation  
Civil Division  
U.S. Department of Justice  
P.O. Box 878, Ben Franklin Station  
Washington, DC 20044

#### XVII PUBLICITY

38. Plaintiffs and Defendants shall hold a joint press conference to announce this Agreement. The INS shall send copies of this Agreement to social service and voluntary agencies agreed upon by the parties, as set forth in Exhibit 5 attached. The parties shall pursue such other public dissemination of information regarding this Agreement as the parties shall agree.

#### XVIII ATTORNEYS' FEES AND COSTS

39. Within 60 days of final court approval of this Agreement, Defendants shall pay to Plaintiffs the total sum of \$374,110.09, in full settlement of all attorneys' fees and costs in this case.

#### XIX TERMINATION

40. All terms of this Agreement shall terminate the earlier of five years after the date of final court approval of this Agreement or three years after the court determines that the INS is in substantial compliance with this Agreement, except that the INS shall continue to house the general population of minors in INS custody in facilities that are licensed for the care of dependent minors.

#### XX REPRESENTATIONS AND WARRANTY

41. Counsel for the respective parties, on behalf of themselves and their clients, represent that they know of nothing in this Agreement that exceeds the legal authority of the parties or is in violation of any law. Defendants' counsel represent and warrant that they are fully authorized and empowered to enter into this Agreement on behalf of the Attorney General, the United States Department of Justice, and the Immigration and Naturalization Service, and acknowledge that Plaintiffs enter into this Agreement in reliance on such representation. Plaintiffs' counsel represent and warrant that they are fully authorized and empowered to enter

into this Agreement on behalf of the Plaintiffs, and acknowledge that Defendants enter into this Agreement in reliance on such representation. The undersigned, by their signatures on behalf of the Plaintiffs and Defendants, warrant that upon execution of this Agreement in their representative capacities, their principals, agents, and successors of such principals and agents shall be fully and unequivocally bound hereunder to the full extent authorized by law.

For Defendants:

Signed: \_\_\_\_\_ Title: \_\_\_\_\_

Dated: \_\_\_\_\_

For Plaintiffs:

Signed: \_\_\_\_\_ Title: \_\_\_\_\_

Dated: \_\_\_\_\_

## EXHIBIT 1

### Minimum Standards for Licensed Programs

A. Licensed programs shall comply with all applicable state child welfare laws and regulations and all state and local building, fire health and safety codes and shall provide or arrange for the following services for each minor in its care:

1. Proper physical care and maintenance, including suitable living accommodations, food, appropriate clothing, and personal grooming items.
2. Appropriate routing medical and dental care, family planning services, and emergency health care services, including a complete medical examination (including screening for infectious disease) within 48 hours of admission, excluding weekends and holidays, unless the minor was recently examined at another facility; appropriate immunizations in accordance with the U.S. Public Health Service (PHS), Center for Disease Control; administration of prescribed medication and special diets; appropriate mental health interventions when necessary.
3. An individualized needs assessment which shall include: (a) various initial intake forms; (b) essential data relating to the identification and history of the minor and family; (c) identification of the minors' special needs including any specific problem(s) which appear to require immediate intervention; (d) an educational assessment and plan; (e) an assessment of family relationships and interaction with adults, peers and authority figures; (f) a statement of religious preference and practice; (g) an assessment of the minor's personal goals, strengths and weaknesses; and (h) identifying information regarding immediate family members, other relatives, godparents or friends who may be residing in the United States and may be able to assist in family reunification.
4. Educational services appropriate to the minor's level of development, and communication skills in a structured classroom setting, Monday through Friday, which concentrates primarily on the development of basic academic competencies and secondarily on English Language Training (ELT). The educational program shall include instruction and educational and other reading materials in such languages as

needed. Basic academic areas should include Science, Social Studies, Math, Reading, Writing and Physical Education. The program shall provide minors with appropriate reading materials in languages other than English for use during the minor's leisure time.

5. Activities according to a recreation and leisure time plan which shall include daily outdoor activity, weather permitting, at least one hour per day of large muscle activity and one hour per day of structured leisure time activities (this should not include time spent watching television). Activities should be increased to a total of three hours on days when school is not in session.

6. At least one (1) individual counseling session per week conducted by trained social work staff with the specific objectives of reviewing the minor's progress, establishing new short term objectives, and addressing both the developmental and crisis-related needs of each minor.

7. Group counseling sessions at least twice a week. This is usually an informal process and takes place with all the minors present. It is a time when new minors are given the opportunity to get acquainted with the staff, other children, and the rules of the program. It is an open forum where everyone gets a chance to speak. Daily program management is discussed and decision are made about recreational activities, etc. It is a time for staff and minors to discuss whatever is on their minds and to resolve problems.

8. Acculturation and adaptation services which include information regarding the development of social and inter-personal skills which contribute to those abilities necessary to live independently and responsibly.

9. Upon admission, a comprehensive orientation regarding program intent, services, rules (written and verbal), expectations and the availability of legal assistance.

10. Whenever possible, access to religious services of the minor's choice.

11. Visitation and contact with family members (regardless of their immigration status), which is structured to encourage such visitation. The staff shall respect the minor's privacy while reasonably preventing the unauthorized release of the minor.

12. A reasonable right to privacy, which shall include the right to (a) wear his or her own clothes, when available; (b) retain a private space in the residential facility, group or foster home for the storage of personal belongings; (c) talk privately on the phone, as permitted by the house rules and regulations; (d) visit privately with guests, as permitted by the house rules and regulations; and (e) receive and send uncensored mail unless there is a reasonable belief that the mail contains contraband.

13. Family reunification services designed to identify relatives in the United States as well as in foreign countries and assistance in obtaining legal guardianship when necessary for the release of the minor.

14. Legal services information regarding the availability of free legal assistance, the right to be represented by counsel at no expense to the government, the right to a removal or exclusion hearing before an immigration judge, the right to apply for political asylum or to request voluntary departure in lieu of removal.

B. Service delivery is to be accomplished in a manner which is sensitive to the age, culture, native language and the complex needs of each minor.

C. Program rules and discipline standards shall be formulated with consideration for the range of ages and maturity in the program and shall be culturally sensitive to

the needs of alien minors. Minors shall not be subjected to corporal punishment, humiliation, mental abuse, or punitive interference with the daily functions of living, such as eating or sleeping. Any sanctions employed shall not: (1) adversely affect either a minor's health, or physical or psychological well-being; or (2) deny minors regular meals, sufficient sleep, exercise, medical care, correspondence privileges, or legal assistance.

D. A comprehensive and realistic individual plan for the care of each minor must be developed in accordance with the minor's needs as determined by the individualized needs assessment. Individual plans shall be implemented and closely coordinated through an operative case management system.

E. Programs shall develop, maintain, and safeguard individual client case records. Agencies and organizations are required to develop a system of accountability which preserves the confidentiality of client information and protects the records from unauthorized use or disclosure.

F. Programs shall maintain adequate records and make regular reports as required by the INS that permit the INS to monitor and enforce this order and other requirements and standards as the INS may determine are in the best interests of the minors.

## EXHIBIT 2

(new)

Instructions to Service Officers re:

Processing, Treatment, and Placement of Minors

These instructions are to advise Service officers of INS policy regarding the way in which minors in INS custody are processed, housed and released. These instructions are applicable nationwide and supersede all prior inconsistent instructions regarding minors.

(a) Minors. A minor is a person under the age of eighteen years. However, individuals who have been emancipated by a state court or convicted and incarcerated for a criminal offense as an adult are not considered minors. Such individuals must be treated as adults for all purposes, including confinement and release on bond.

Similarly, if a reasonable person would conclude that an individual is an adult despite his or her claims to be a minor, the INS shall treat such person as an adult for all purposes, including confinement and release on bond or recognizance. The INS may require such an individual to submit to a medical or dental examination conducted by a medical professional or to submit to other appropriate procedures to verify his or her age. If the INS subsequently determines that such an individual is a minor, he or she will be treated as a minor for all purposes.

(b) General policy. The INS treats and will continue to treat minors with dignity, respect and special concern for their particular vulnerability. INS policy is to place each detained minor in the least restrictive setting appropriate to the minor's age and special needs, provided that such setting is consistent with the need to ensure the

minor's timely appearance in court and to protect the minor's well-being and that of others. INS officers are not required to release a minor to any person or agency whom they have reason to believe may harm or neglect the minor or fail to present him or her before the INS or the immigration courts when requested to do so.

(c) Processing. The INS will expeditiously process minors and will provide a Form I-770 notice of rights, including the right to a bond redetermination hearing, if applicable.

Following arrest, the INS will hold minors in a facility that is safe and sanitary and that is consistent with the INS' concern for the particular vulnerability of minors. Such facilities will have access to toilets and sinks, drinking water and food as appropriate, medical assistance if the minor is in need of emergency services, adequate temperature control and ventilation, adequate supervision to protect minors from others, and contact with family members who were arrested with the minor. The INS will separate unaccompanied minors from unrelated adults whenever possible. Where such segregation is not immediately possible, an unaccompanied minor will not be detained with an unrelated adult for more than 24 hours.

If the juvenile cannot be immediately released, and no licensed program (described below) is available to care for him or her, s/he should be placed in an INS or INS-contract facility that has separate accommodations for minors, or in a State or county juvenile detention facility that separates minors in INS custody from delinquent offenders. The INS will make every effort to ensure the safety and well-being of juveniles placed in these facilities.

(d) Release. The INS will release minors from its custody without unnecessary delay, unless detention of a juvenile is required to secure his or her timely appearance or to ensure the minor's safety or that of others. Minors shall be released, in the following order of preference, to:

(i) a parent;

(ii) a legal guardian;

(iii) an adult relative (brother, sister, aunt, uncle, or grandparent);

(iv) an adult individual or entity designated by the parent or legal guardian as capable and willing to care for the minor's well-being in (i) a declaration signed under penalty of perjury before an immigration or consular officer, or (ii) such other documentation that establishes to the satisfaction of the INS, in its discretion, that the individual designating the individual or entity as the minor's custodian is in fact the minor's parent or guardian;

(v) a state-licensed juvenile shelter, group home, or foster home willing to accept legal custody (as opposed to only physical custody); or



(vi) an adult individual or entity seeking custody, in the discretion of the INS, when it appears that there is no other likely alternative to long term detention and family reunification does not appear to be a reasonable possibility.

(e) Certification of custodian. Before a minor is released, the custodian must execute an Affidavit of Support (Form I-134) and an agreement to:

(i) provide for the minor's physical, mental, and financial well-being;

(ii) ensure the minor's presence at all future proceedings before the INS and the immigration court;

(iii) notify the INS of any change of address within five (5) days following a move;

(iv) if the custodian is not a parent or legal guardian, not transfer custody of the minor to another party without the prior written permission of the District Director;

(v) notify the INS at least five days prior to the custodian's departure from the United States, whether the departure is voluntary or pursuant to a grant of voluntary departure or order of removal; and

(vi) if dependency proceedings involving the minor are initiated in state court, notify the INS of the initiation of such proceedings and the dependency court of any removal proceedings pending against the minor.

In an emergency, a custodian may transfer temporary physical custody of a minor prior to securing permission from the INS, but must notify the INS of the transfer as soon as is practicable, and in all cases within 72 hours. Examples of an "emergency" include the serious illness of the custodian, destruction of the home, etc. In all cases where the custodian seeks written permission for a transfer, the District Director shall promptly respond to the request.

The INS may terminate the custody arrangements and assume legal custody of any minor whose custodian fails to comply with the agreement. However, custody arrangements will not be terminated for minor violations of the custodian's obligation to notify the INS of any change of address within five days following a move.

(f) Suitability assessment. An INS officer may require a positive suitability assessment prior to releasing a minor to any individual or program. A suitability assessment may include an investigation of the living conditions in which the minor is to be placed and the standard of care s/he would receive, verification of identity and employment of the individuals offering support, interviews of members of the household, and a home visit. The assessment will also take into consideration the wishes and concerns of the minor.

(g) Family reunification. Upon taking a minor into custody, the INS, or the licensed program in which the minor is placed, will promptly attempt to reunite the minor with

his or her family to permit the release of the minor under Paragraph (d) above. Such efforts at family reunification will continue as long as the minor is in INS or licensed program custody and will be recorded by the INS or the licensed program in which the minor is placed.

(h) Placement in licensed programs. A "licensed program" is any program, agency or organization licensed by an appropriate state agency to provide residential, group, or foster care services for dependent children, including a program operating group homes, foster homes, or facilities for special needs minors. Exhibit 1 of the Flores v. Reno Settlement Agreement describes the standards required of licensed programs. Juveniles who remain in INS custody must be placed in a licensed program within three calendar days if the minor was apprehended in an INS district in which a licensed program is located and has space available, or within five calendar days in all other cases, except when:

(i) the minor falls under Paragraph (i), "Secure and supervised detention," below;

(ii) the INS reasonably believes the alien is an adult and is conducting medical or dental examinations to determine age;

(iii) a court decree or court-approved settlement requires otherwise;

(iv) an emergency (such as a natural disaster, fire, civil disturbance, or medical emergency) or influx of minors into the United States (meaning the INS has more than 130 minors in custody) prevents compliance, in which case all minors should be placed in licensed programs as expeditiously as possible; or

(v) the minor must be transported from remote areas for processing or speaks an unusual language such that a special interpreter is required to process the minor, in which case the minor must be placed in a licensed program within five business days.

(vi) Secure and supervised detention. A minor may be held in or transferred to a State or county juvenile detention facility or in a secure INS facility or INS-contracted facility having separate accommodations for minors, whenever the District Director or Chief Patrol Agent determines that the minor:

(i) has been charged with, is chargeable, or has been convicted of a crime, or is the subject of delinquency proceedings, has been adjudicated delinquent, or is chargeable with a delinquent act, unless the minor's offense is:

(a) an isolated offense not within a pattern of criminal activity which did not involve violence against a person or the use or carrying of a weapon (Examples: breaking and entering, vandalism, DUI, etc.); or

(b) a petty offense which is not considered grounds for stricter means of detention in any case (Examples: shoplifting, joy riding, disturbing the peace, etc.);

(ii) has committed, or has made credible threats to commit, a violent or malicious act (whether directed at him- or herself or others) while in INS legal custody or while in the presence of an INS officer;

(iii) has engaged, while in a licensed program, in conduct that has proven to be unacceptably disruptive of the normal functioning of the licensed program in which he or she has been placed and removal is necessary to ensure the welfare of the minor or others, as determined by the staff of the licensed program (Examples: drug or alcohol abuse, stealing, fighting, intimidation of others, etc.);

(iv) is an escape-risk; or

(v) must be held in a secure facility for his or her own safety, such as when the INS has reason to believe that a smuggler would abduct or coerce a particular minor to secure payment of smuggling fees.

A "chargeable" offense means that the INS has probable cause to believe that the individual has committed a specified offense.

The term "escape-risk" means that there is a serious risk that the minor will attempt to escape from custody. Factors to consider when determining whether a minor is an escape-risk or not include, but are not limited to, whether:

(a) the minor is currently under a final order of removal;

(b) the minor's immigration history includes: a prior breach of a bond; a failure to appear before the INS or the immigration court; evidence that the minor is indebted to organized smugglers for his or her transport; or a voluntary departure or a previous removal from the United States pursuant to a final order of removal;

(c) the minor has previously absconded or attempted to abscond from INS custody.

The INS will not place a minor in a State or county juvenile detention facility, secure INS detention facility, or secure INS-contracted facility if less restrictive alternatives are available and appropriate in the circumstances, such as transfer to another licensed program or transfer to a medium security facility. A "medium security facility" may have a secure perimeter but cannot have major internal restraining construction, such as locked cells. A medium security facility must otherwise meet all the standards of a licensed program and provide intensive staff supervision and counseling services.

All determinations to place a minor in a secure facility will be reviewed and approved by the regional Juvenile Coordinator. INS officers must also provide any minor not placed in a licensed program with a written notice of the reasons for housing the minor in a secure or medium security facility.

(j) Notice of right to bond redetermination and judicial review of placement. A minor in removal proceedings shall be afforded a bond redetermination hearing before an immigration judge in every case, unless the minor indicates on the Notice of Custody Determination form that he or she refuses such a hearing. A juvenile who is not released or placed in a licensed program shall be provided (1) a written explanation of the right of judicial review (copy attached) and (2) the list of free legal services providers compiled pursuant to INS regulations (unless previously given to the minor).

(k) Transportation and transfer. Unaccompanied minors should not be transported in vehicles with detained adults except when being transported from the place of arrest or apprehension to an INS office or where separate transportation would be otherwise impractical, in which case minors shall be separated from adults. INS officers shall take all necessary precautions for the protection of minors during transportation with adults.

When a minor is to be released, the INS will assist him or her in making transportation arrangements to the INS office nearest the location of the person (or facility) to whom a minor is to be released. The INS may, in its discretion, provide transportation to such minors.

Whenever a minor is transferred from one placement to another, s/he shall be transferred with all of his or her possessions and legal papers; provided, however, that if the minor's possessions exceed the amount permitted normally by the carrier in use, the possessions must be shipped to the minor in a timely manner. No minor who is represented by counsel should be transferred without advance notice to counsel, except in unusual and compelling circumstances such as where the safety of the minor or others is threatened or the minor has been determined to be an escape-risk, or where counsel has waived notice, in which cases notice must be provided to counsel within 24 hours following transfer.

(l) Periodic reporting. Statistical information on minors placed in proceedings who remain in INS custody for longer than 72 hours must be reported to the Juvenile Coordinator by all INS district offices and Border Patrol stations. Information will include: (a) biographical information, including the minor's name, date of birth, and country of birth, (b) date placed in INS custody, (c) each date placed, removed or released, (d) to whom and where placed, transferred, removed or released, (e) immigration status, and (f) hearing dates. INS officers should also inform the Juvenile Coordinator of the reasons for placing a minor in a medium-security facility or detention facility as described in paragraph (l).

(m) Attorney-client visits by Plaintiffs' counsel. The INS will permit the lawyers for the Flores v. Reno plaintiff class to visit minors, even though they may not have the names of minors who are housed at a particular location. A list of Plaintiffs' counsel entitled to make attorney-client visits with minors is available from the district Juvenile Coordinator. Attorney-client visits may also be conducted by any staff attorney employed by the Center for Human Rights & Constitutional Law of Los Angeles, California, or the National Center for Youth Law of San Francisco,

California, provided that such attorney presents credentials establishing his or her employment prior to any visit.

Visits must occur in accordance with generally applicable policies and procedures relating to attorney-client visits at the facility in question. Upon Plaintiffs' counsel's arrival at a facility for attorney-client visits, the facility staff must provide Plaintiffs' counsel with a list of names and alien registration numbers for the minors housed at that facility. In all instances, in order to memorialize any visit to a minor by Plaintiffs' counsel, Plaintiffs' counsel must file a notice of appearance with the INS prior to any attorney-client meeting. Plaintiffs' counsel may limit the notice of appearance to representation of the minor in connection with his placement or treatment during INS custody. Plaintiffs' counsel must submit a copy of the notice of appearance by hand or by mail to the local INS juvenile coordinator and a copy by hand to the staff of the facility.

A minor may refuse to meet with Plaintiffs' counsel. Further, the minor's parent or legal guardian may deny Plaintiffs' counsel permission to meet with the minor.

(n) Visits to licensed facilities. In addition to the attorney-client visits, Plaintiffs' counsel may request access to a licensed program's facility (described in paragraph (h)) or to a medium-security facility or detention facility (described in paragraph (i)) in which a minor has been placed. The district juvenile coordinator will convey the request to the facility's staff and coordinate the visit. The rules and procedures to be followed in connection with such visits are set out in Exhibit 4 of the Flores v. Reno Settlement Agreement, unless Plaintiffs' counsel and the facility's staff agree otherwise. In all visits to any facility, Plaintiffs' counsel and their associated experts must treat minors and staff with courtesy and dignity and must not disrupt the normal functioning of the facility.

### EXHIBIT 3

#### Contingency Plan

In the event of an emergency or influx that prevents the prompt placement of minors in licensed programs with which the Community Relations Service has contracted, INS policy is to make all reasonable efforts to place minors in programs licensed by an appropriate state agency as expeditiously as possible. An "emergency" is an act or event, such as a natural disaster (e.g., earthquake, fire, hurricane), facility fire, civil disturbance, or medical emergency (e.g., a chicken pox epidemic among a group of minors) that prevents the prompt placement of minors in licensed facilities. An "influx" is defined as any situation in which there are more than 130 minors in the custody of the INS who are eligible for placement in licensed programs.

1. The Juvenile Coordinator will establish and maintain an Emergency Placement List of at least 80 beds at programs licensed by an appropriate state agency that are potentially available to accept emergency placements. These 80 placements would supplement the 130 placements that the INS normally has available, and whenever possible, would meet all standards applicable to juvenile placements the INS

normally uses. The Juvenile Coordinator may consult with child welfare specialists, group home operators, and others in developing the List. The Emergency Placement List will include the facility name; the number of beds potentially available at the facility; the name and telephone number of contact persons; the name and telephone number of contact persons for nights, holidays, and weekends if different; any restrictions on minors accepted (e.g., age); and any special services that are available.

2. The Juvenile Coordinator will maintain a list of minors affected by the emergency or influx, including (1) the minor's name, (2) date and country of birth, (3) date placed in INS custody, and (4) place and date of current placement.

3. Within one business day of the emergency or influx the Juvenile Coordinator or his or her designee will contact the programs on the Emergency Placement List to determine available placements. As soon as available placements are identified, the Juvenile Coordinator will advise appropriate INS staff of their availability. To the extent practicable, the INS will attempt to locate emergency placements in geographic areas where culturally and linguistically appropriate community services are available.

4. In the event that the number of minors needing emergency placement exceeds the available appropriate placements on the Emergency Placement List, the Juvenile Coordinator will work with the Community Relations Service to locate additional placements through licensed programs, county social services departments, and foster family agencies.

5. Each year the INS will reevaluate the number of regular placements needed for detained minors to determine whether the number of regular placements should be adjusted to accommodate an increased or decreased number of minors eligible for placement in licensed programs. However, any decision to increase the number of placements available shall be subject to the availability of INS resources. The Juvenile Coordinator shall promptly provide Plaintiffs' counsel with any reevaluation made by INS pursuant to this paragraph.

6. The Juvenile Coordinator shall provide to Plaintiffs' counsel copies of the Emergency Placement List within six months after the court's final approval of the Settlement Agreement.

#### EXHIBIT 4

##### Agreement Concerning Facility Visits Under Paragraph 33

The purpose of facility visits under paragraph 33 is to interview class members and staff and to observe conditions at the facility. Visits under paragraph 33 shall be conducted in accordance with the generally applicable policies and procedures of the facility to the extent that those policies and procedures are consistent with this Exhibit.

Visits authorized under paragraph 33 shall be scheduled no less than seven (7) business days in advance. The names, positions, credentials, and professional association (e.g., Center for Human Rights and Constitutional Law) of the visitors will be provided at that time.

All visits with class members shall take place during normal business hours.

No video recording equipment or cameras of any type shall be permitted. Audio recording equipment shall be limited to hand-held tape recorders.

The number of visitors will not exceed six (6) or, in the case of a family foster home, four (4), including interpreters, in any instance. Up to two (2) of the visitors may be non-attorney experts in juvenile justice and/or child welfare.

No visit will extend beyond three (3) hours per day in length. Visits shall minimize disruption to the routine that minors and staff follow.

## EXHIBIT 5

### List of Organizations to Receive Information re: Settlement Agreement

Eric Cohen, Immig. Legal Resource Center, 1663 Mission St. Suite 602, San Francisco, CA 94103

Cecilia Munoz, Nat'l Council Of La Raza, 810 1st St. NE Suite 300, Washington, D.C. 20002

Susan Alva, Immig. & Citiz. Proj Director, Coalition For Humane Immig. Rights of LA, 1521 Wilshire Blvd., Los Angeles, CA 90017

Angela Cornell, Albuquerque Border Cities Proj., Box 35895, Albuquerque, NM 87176-5895

Beth Persky, Executive Director, Centro De Asuntos Migratorios, 1446 Front Street, Suite 305, San Diego, CA 92101

Dan, Kesselbrenner, , National Lawyers Guild, National Immigration Project, 14 Beacon St., #503, Boston, MA 02108

Lynn Marcus, SWRRP, 64 E. Broadway, Tucson, AZ 85701-1720

Maria Jimenez, American Friends Service Cmte., ILEMP, 3522 Polk Street, Houston, TX 77003-4844

Wendy Young, U.S. Cath. Conf., 3211 4th St. NE, Washington, DC, 20017-1194

Miriam Hayward, International Institute Of The East Bay, 297 Lee Street, Oakland, CA 94610

Emily Goldfarb, Coalition For Immigrant & Refugee Rights, 995 Market Street, Suite 1108, San Francisco, CA 94103

Jose De La Paz, Director, California Immigrant Workers Association, 515 S. Shatto Place, Los Angeles, CA, 90020

Annie Wilson, LIRS, 390 Park Avenue South, First Asylum Concerns, New York, NY 10016

Stewart Kwoh, Asian Pacific American Legal Center, 1010 S. Flower St., Suite 302, Los Angeles, CA 90015

Warren Leiden, Executive Director, AILA, 1400 Eye St., N.W., Ste. 1200, Washington, DC, 20005

Frank Sharry, Nat'l Immig. Ref. & Citiz. Forum, 220 I Street N.E., Ste. 220, Washington, D.C. 20002

Reynaldo Guerrero, Executive Director, Center For Immigrant's Rights, 48 St. Marks Place, New York, NY 10003

Charles Wheeler, National Immigration Law Center, 1102 S. Crenshaw Blvd., Suite 101, Los Angeles, CA 90019

Deborah A. Sanders, Asylum & Ref. Rts. Law Project, Washington Lawyers Comm., 1300 19th Street, N.W., Suite 500, Washington, D.C. 20036

Stanley Mark, Asian American Legal Def. & Ed. Fund, 99 Hudson St., 12th Floor, New York, NY 10013

Sid Mohn, Executive Director, Travelers & Immigrants Aid, 327 S. LaSalle Street, Suite 1500, Chicago, IL, 60604

Bruce Goldstein, Attornet At Law, Farmworker Justice Fund, Inc., 2001 S Street, N.W., Suite 210, Washington, DC 20009

Ninfa Krueger, Director, BARCA, 1701 N. 8th Street, Suite B-28, McAllen, TX 78501

John Goldstein, Proyecto San Pablo, PO Box 4596, Yuma, AZ 85364

Valerie Hink, Attorney At Law, Tucson Ecumenical Legal Assistance, P.O. Box 3007, Tucson, AZ 85702

Pamela Mohr, Executive Director, Alliance For Children's Rights, 3708 Wilshire Blvd., Suite 720, Los Angeles, CA 90010

Pamela Day, Child Welfare League Of America, 440 1st St. N.W., Washington, DC 20001



Susan Lydon, Esq., Immigrant Legal Resource Center, 1663 Mission St., Ste 602, San Francisco, CA 94103

Patrick Maher, Juvenile Project, Centro De Asuntos Migratorios, 1446 Front Street, # 305, San Diego, CA 92101

Lorena Munoz, Staff Attorney, Legal Aid Foundation of LA-IRO, 1102 Crenshaw Blvd., Los Angeles, CA 90019

Christina Zawisza, Staff Attorney, Legal Services of Greater Miami, 225 N.E. 34th Street, Suite 300, Miami, FL 33137

Miriam Wright Edelman, Executive Director, Children's Defense Fund, 122 C Street N.W., 4th Floor, Washington, DC 20001

Rogelio Nunez, Executive Director, Proyecto Libertad, 113 N. First St., Harlingen, TX 78550

## EXHIBIT 6

### Notice of Right to Judicial Review

"The INS usually houses persons under the age of 18 in an open setting, such as a foster or group home, and not in detention facilities. If you believe that you have not been properly placed or that you have been treated improperly, you may ask a federal judge to review your case. You may call a lawyer to help you do this. If you cannot afford a lawyer, you may call one from the list of free legal services given to you with this form."

## **Attachment 2 Perez-Funez Rights Advisal**

### Perez-Funez Rights Advisal

JOSE ANTONIO PEREZ-FUNEZ V. INS, ET AL.  
GENERAL ADVISAL

The following is to be given orally in English or Spanish or any other language understood by the detainee:

You are being detained by the United States Immigration and Naturalization Service. I am handing you a written notice that describes your rights. Please read this notice carefully before deciding whether you wish to agree to be removed from the United States voluntarily, demand a removal hearing, request political asylum, or apply for any other available form or relief. You must sign a copy of the notice to show that you have received it. If you cannot read, please tell me and I will read the notice to you.

### NOTICE OF RIGHTS

[To be printed in English and Spanish]

This is an advisal of your legal rights and alternatives. Do not sign any waiver of your rights until you have either read this notice, or have had this notice read to you, and until you understand your rights.

1. Right To Be Represented by an Attorney

You have the right to be represented by an attorney of your choice at your own expense. If you wish legal advice and cannot afford a lawyer, you may contact one of the lawyers listed on the attached sheet who provide free legal services. If you wish to contact an attorney, you should so inform me after you have read, or have had read to you, this notice.

2. Right to a Removal Hearing

You have the right to a removal hearing to determine whether you are lawfully in the United States before you can be deported. If you request a removal hearing, you may be represented at the hearing by an attorney at your own expense. You may be eligible to be released on bail until the time of the removal hearing. If you are released on bail and then appear at the hearing as ordered, the money you have paid in as bail will be returned to you. If you wish to have a removal hearing, you should so inform me after you have read, or have had read to you, this notice.

3. Right to Apply for Political Asylum

You may be eligible for political asylum if you have reason to believe that you would be persecuted because of your race, religion, nationality, membership in a particular social group, or political opinions if you were deported from the Unites States. If you wish to apply for political asylum, you should so inform me after you have read, or have had read to you, this notice.

4. Right to Request Voluntary Departure

If you wish to be removed immediately from the United States, you may ask to be allowed to voluntarily depart. By agreeing to voluntarily depart, you give up your right to a removal hearing and your right to apply for political asylum. If you wish to apply for voluntary departure, you should so inform me after you have read, or have had read to you, this notice.

I acknowledge that I have read, or have had read to me, a copy of the above notice or rights, and that a list of the available free services has been provided to me.

Signature of Juvenile: \_\_\_\_\_

Signature of INS Official: \_\_\_\_\_

Date, Time, and Location:  
\_\_\_\_\_

**Attachment 3 Special Use Forms**

Special Use Forms

Attachment 3a: Referral for Home Assessment Form

Attachment 3b: Notice of Placement in Secure Juvenile Detention Facility

**Attachment 3a Referral for Home Assessment Form**

Referral for Home Assessment Form

MEMORANDUM U. S. DEPARTMENT OF JUSTICE  
IMMIGRATION & NATURALIZATION SERVICE

SUBJECT

Referral for Home Assessment

DATE TO FROM

\_\_\_\_\_  
Office of International Affairs  
Humanitarian Affairs Branch

This is to request that a home assessment be conducted on the following juvenile currently held at: \_\_\_\_\_

Name of Juvenile: \_\_\_\_\_ DOB:  
\_\_\_\_\_

Alien #: \_\_\_\_\_ MALE \_\_\_\_\_ FEMALE  
\_\_\_\_\_

Relatives in U. S. (if available):

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone #: \_\_\_\_\_ Home

\_\_\_\_\_ Work

Relationship to juvenile: \_\_\_\_\_

For additional information on the juvenile or to speak with him or her, please contact the following person:

Name and Title: \_\_\_\_\_ Telephone #: \_\_\_\_\_

### Attachment 3b Notice of Placement in Secure Juvenile Detention Facility

Notice of Placement in Secure Juvenile Detention Facility

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

RE: Placement in a secure or medium-secure detention facility by INS

Dear \_\_\_\_\_:  
[juvenile's name]

Reference is made to your detention by the United States Immigration and Naturalization Service on \_\_\_\_\_. The Service treats those individuals who are under eighteen years of age as juveniles. Pursuant to the *Flores v. Reno* Settlement Agreement, the Service will not detain a juvenile in a secure or medium-secure juvenile detention facility if there are less restrictive alternatives available. However, under certain conditions, the Service may detain juveniles in a secure or medium-secure juvenile detention facility. Because of the following reason(s), you are being placed in a secure or medium-secure juvenile facility. (Check as many as apply):

- 1. You are considered to be an escape risk (previous escape or attempt, final order, failure to appear, etc...)
- 2. The Service believes you are an adult.
- 3. There is an emergency influx of minors into the U.S.
- 4. You speak an unusual language and the Service is attempting to locate an interpreter.
- 5. You are being transported from a remote area.
- 6. The Service is concerned about your safety.
- 7. There are no alternative placement options at this time.
- 8. You have been convicted of a crime as an adult.
- 9. You have been adjudicated a delinquent.
- 10. You have engaged in disruptive behavior while in a licensed program.
- 11. You are chargeable with a crime or delinquent offense.
- 12. You are in criminal or delinquency proceedings.
- 13. You have committed or threatened to commit a violent or malicious act toward yourself or other(s).
- 14. Per the *Orantes* decision, all Salvadoran juveniles must remain in the district where they were apprehended for a minimum of 7 days.

Sincerely,

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Name and Title of Placing Official

#### Appendix 11-4 Footnotes

- FN 1 In the early stages of this litigation, the Federal court in the Central District of California found in favor of the plaintiffs on two claims; in 1993, however, the United States Supreme Court ruled in favor of the INS on other claims. Since that decision, the parties have negotiated a settlement of the remaining issues, which was signed by the INS Commissioner, approved by the Federal court, and therefore is now in effect.
- FN 2 The individual may be required to submit to a medical or dental examination (medical professional) or other appropriate procedures to verify age. If determined to be a juvenile, s/he will be treated as such for all purposes.
- FN 3 For INS purposes, a conservator is the person with physical custody of the juvenile. For juveniles 13 years old or under, all documents must be signed by a conservator.
- FN 4 A juvenile brought to the United States by a smuggler is to be considered "unaccompanied" unless the smuggler is an adult relative (parent, brother, sister, aunt, uncle, or grandparent) or legal guardian. If the smuggler is not a relative or guardian, he or she should not be consulted concerning the disposition of the juvenile's case.
- FN 5 In this case, the "conservator" has physical custody, while the INS maintains legal custody. Remember, all documents served on or completed for juveniles who are 13 years old or under must be signed by a conservator.
- FN 6 This general release policy does not apply to juveniles in mandatory detention.
- FN 7 In order to avert potential liability when a Notice to Appear is issued and an unaccompanied child ordered released, the District Director should contact the U.S. Attorney's Office and ask that an Assistant U.S. Attorney petition the court to appoint a guardian. This situation is envisioned as a rare one.

- FN 8 "Chargeable" means that the INS has probable cause to believe that the individual has committed a specific offense.
- FN9 A rare exception may apply if a medical professional determines that the juvenile presents a danger to him- or herself or to others.
- FN 10 U.S. Public Health Service authorities have advised that a surgical mask is considered adequate for these purposes. A HEPA mask is not necessary.
- FN 11 Escapes from a contract guard or contract facility may be determined to be a breach of the contract. If that finding is made, the COTR or Investigating Officer will prepare a separate report for submission to the appropriate contracting office, with a recommendation as to whether a deduction should be imposed, if applicable. Copies should be included with the escape analysis forwarded to the Regional Juvenile Coordinator or his/her designee in DDP.

#### Appendix 11-4 Endnotes

- a This statement is from an 8/21/97 memo from the Office of Programs on "unaccompanied minors subject to expedited removal" to Management Team, Regional Directors, District Directors, Officers-in-Charge, Chief Patrol Agents, Asylum Office Directors, Port Directors, Director of Policy Directives and Instructions, ODTF Glynco, and ODTF Artesia.
- b These procedures are from an 8/21/97 memo from the Office of Programs on "unaccompanied minors subject to expedited removal" to Management Team, Regional Directors, District Directors, Officers-in-Charge, Chief Patrol Agents, Asylum Office Directors, Port Directors, Director of Policy Directives and Instructions, ODTF Glynco, and ODTF Artesia.

- c From an 8/21/97 memo from Office of Programs on "unaccompanied minors subject to expedited removal."
- d Information in 2.1.5 is from a memo dated 10/4/95 to all Regional Directors RODIRS; Regional Operations Liaison Officers (ROOPS) (RODDP); all DIDIRS (X-Foreign); all CPAs; INS Director of Training FLETC, GLYNCO, GA; INS Director of Training FLETC, Artesia, NM. From Joan Higgins, Assistant Commissioner of Detention and Deportation.
- e This section is from a 12/4/95 memo to Regional and District Directors from the Office of Deputy Commissioner on "Instructions for the Detention, Placement, and Release of Chinese Juveniles."
- f From 12/8/97 memo, "Review of Cases of Chinese Juveniles Upon Reaching the Age of 18."
- g This section was drawn from the following memo: a 12/8/97 memo, "Review of Cases of Chinese Juveniles Upon Reaching the Age of 18." This memo updates and expands upon the memos of 9/28/94 ("Chinese Juveniles Reaching Majority While in Foster Care") and 12/4/95 ("Instructions for the Detention, Placement, and Release of Chinese Juveniles." A memo dated 11/1/95, "Chinese Juveniles in Foster Homes," was also used as an information source, along with a 12/15/95 memo, "Project Locate Update" to Regional Directors, Eastern, Central, Western.
- h From 12/8/97 memo (see endnote j above).
- i From 9/28/94 memo (see endnote j above).
- j From 12/8/97 memo (see endnote j above).

- k Information in 4.1.1 and 4.1.2 from 10/31/97 memo, "Juvenile Bedspace," from Office of Field Operations.
- l Permission requirement from 12-13-91 memo, "National Policy Regarding Detention and Release of Unaccompanied Alien Minors."
- m Juvenile bedspace requirements (4.1.4, 4.1.5, and 4.1.6) are taken from the 10/31/97 memo (see endnote o below).
- n From 12/13/91 memo, "National Policy Regarding Detention and Release of Unaccompanied Alien Minors," from the Office of the Commissioner.
- o Taken from Enforcement Standard, "Escorts," VI E-F, 2/5/98.
- p Memo from William R. Yates, Eastern Regional Director, on "Escape Reporting Procedures," 8/3/98.
- q This information on required report content is taken from a 5/25/82 memo from J.F. Salgado, Associate Commissioner, Enforcement, on "Escape Analysis and Reporting Procedures."
- r From a 12/4/95 memo, "Instructions for the Detention, Placement, and Release of Chinese Juveniles," to Regional and District Directors, from the Office of Deputy Commissioner.
- s From a 10/4/95 telegraphic message from Joan Higgins, Assistant Commissioner, Detention and Deportation.



**Appendix 11-4.1 JUVENILE CASE ACTION WORKSHEET**

**Appendix 11-14.2 JUVENILE CASE SPONSOR WORKSHEET**

**Appendix 11-4.3 INS Juvenile Shelter Care Standards Checklist**

|   |   |
|---|---|
| <p><b>INS Juvenile Shelter Care Standards Checklist</b></p> | <p><b>Rating 1–5:</b></p> <p>1=in compliance; 2=not in compliance;</p> <p>3= exception noted; 4=staff information;</p> <p>5=confirmed</p> |
|---|---|

| <b>A. Administration and Management (Part I of <i>JCRF</i> manual)<sup>11</sup></b>  | 2 | 3 | 4 | 5 |
|--|---|---|---|---|
| 1. Written policy provides that the facility and its programs are managed by a single administrative officer (3-JCRF-1A-06).                         |   |   |   |   |
| 2. Facility administrator qualifications include a bachelor’s degree in a related discipline and demonstrated ability and leadership (3-JCRF-1A-07). |   |   |   |   |
| 3. Written policy provides that new or revised policies and procedures are disseminated to designated staff and volunteers (3-JCRF-1A-13).           |   |   |   |   |
| 4. Written policy provides for regular meetings, at least monthly, between the administrator and key staff members (3-JCRF-1A-14).                   |   |   |   |   |
| 5. Written policy provides that firearms are not permitted in the facility (3-JCRF-1A-22).   |   |   |   |   |

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| 6. | The facility has written fiscal policies and procedures adopted by the governing authority that meet minimum requirements (3-JCRF-1B-02).      |  |  |  |  |  |
| 7. | Written policy provides that any financial transactions between juveniles, staff, and others are approved by the administrator (3-JCRF-1B-17). |  |  |  |  |  |
| 8. | Written policy prohibits sexual harassment (3-JCRF-1C-04).   |  |  |  |  |  |

(table continued on next page)

9. Written policy specifies support for a drug-free workplace for all employees and includes certain minimum principles (3-JCRF-1C-05).
10. Written policy provides that there are written job descriptions and qualifications for all positions in the facility (3-JCRF-1C-06).
11. A criminal record check is conducted on all new employees, according to state and federal statutes (3-JCRF-1C-10).
12. Written policy provides that employees who work with juveniles receive a physical examination (3-JCRF-1C-11).
13. Written policy provides that all personnel working with juveniles are informed and agree in writing to confidentiality policies (3-JCRF-1C-17).
14. The facility provides initial orientation for all new employees during their first week of employment (3-JCRF-1D-03).
15. Written policy provides that all training programs are conducted by qualified trainers in that particular area (3-JCRF-1D-05).
16. Written policy provides that administrative, managerial, and professional specialist staff receive 40 hours of training (beyond orientation) during their 1st year and 40 hours a year thereafter (3-JCRF-1D-09).
17. Written policy provides that all juvenile careworkers receive an additional 120 hours of training during their 1st year and 40 hours a year thereafter (3-JCRF-1D-10).
18. Written policy provides that all support employees with regular or daily contact with juveniles receive 40 hours of training (beyond orientation) during their 1st year and 40 hours a year thereafter (3-JCRF-1D-11).
19. All part-time staff, volunteers, and contractors receive formal orientation appropriate to their assignments, with training as needed (3-JCRF-1D-13).
20. Written policy governs case record management, to include several minimum areas (3-JCRF-1E-01).
21. Written policy provides that a record is maintained for each juvenile that includes several minimum components (3-JCRF-1E-02).

INS Juvenile Shelter Care Standards Checklist

Rating 1–5:  
 1=in compliance; 2=not in compliance;  
 3= exception noted; 4=staff information; 5=confirmed

A. Administration and Management—Cont.

1      2      3      4      5

22. Written policy provides for the auditing of juvenile records at least monthly (3-JCRF-1E-03).
23. Written policy provides that appropriate safeguards exist to minimize the possibility of theft, loss, or destruction of records (3-JCRF-1E-05).
24. Written policy provides that an updated case file is transferred along with a juvenile either simultaneously or within 72 hours (3-JCRF-1E-06).
25. Written policy provides that records are safeguarded from unauthorized or improper disclosure (3-JCRF-1E-07).
26. Written policy governs the voluntary participation of juveniles in non-medical, nonpharmaceutical, and noncosmetic research (3-JCRF-1F-09).
27. A staff member is responsible for supervising citizen involvement and volunteer service programs that benefit juveniles (3-JCRF-1G-01).
28. Volunteers agree in writing to honor facility policies, particularly those relating to the security and confidentiality of information (3-JCRF-1G-05).
29. Written policy provides that all volunteers complete an appropriate, orientation and/or training program before being assigned (3-JCRF-1G-07).
30. Written policy specifies that volunteers may perform professional services only when they are certified or licensed to do so (3-JCRF-1G-08).

B. Physical Plant (Part II of JCRF manual)

1            2            3            4            5

31. The facility conforms to all applicable state and local building codes (3-JCRF-2A-01).
32. Exits in the facility comply with state or local fire authorities or the authority having jurisdiction (3-JCRF-2A-03).
33. The number of juveniles does not exceed the facility's rated bed capacity (3-JCRF-2B-03).
34. Each sleeping room complies with minimum requirements for privacy, comfort, light, space, and temperature (3-JCRF-2C-01).
35. Living rooms with space for varied activities are available (3-JCRF-2C-02).
36. Written policy provides that the facility permits juveniles to decorate their living and sleeping quarters with personal possessions (3-JCRF-2C-03).
37. The facility has, at minimum, one operable toilet for every eight juveniles (3-JCRF-2C-04).
38. The facility has, at minimum, one operable shower or bathing facility with hot and cold running water for every eight juveniles (3-JCRF-2C-05).
39. The facility has, at minimum, one operable wash basin with hot and cold running water for every eight juveniles (3-JCRF-2C-06).

- 40. Written policy provides that juveniles with disabilities are housed in a safe and secure manner (3-JCRF-2C-08).
- 41. Written policy provides that all sleeping quarters in the facility are well-lighted and properly ventilated (3-JCRF-2D-01).
- 42. Temperatures in indoor living and work areas are appropriate to summer and winter comfort zones (3-JCRF-2D-02).
- 43. Adequate space and furnishings to accommodate activities, such as group meetings of the juveniles, are provided in the facility (3-JCRF-2E-01).
- 44. The facility provides adequate private counseling space (3-JCRF-2E-02).
- 45. Written policy provides for adequate and appropriate areas for visitation and for recreation programs (3-JCRF-2E-03).
- 46. Adequate dining space is provided for the juveniles (3-JCRF-2E-04).

INS Juvenile Shelter Care Standards Checklist

Rating 1–5:  
 1=in compliance; 2=not in compliance;  
 3= exception noted; 4=staff information; 5=confirmed

B. Physical Plant—Cont. (Part II of JCRF manual)

1      2      3      4      5

- 47. When the facility has a kitchen, the kitchen, dining, and food storage areas are properly ventilated, furnished, and cleaned (3-JCRF-2E-05).
- 48. The facility has adequate space for janitorial supplies (3-JCRF-2E-07).
- 49. Space is provided to store and issue clothing, bedding, cleaning supplies, and other items required for daily operations (3-JCRF-2E-08).
- 50. Adequate space is provided for storing the personal property of juveniles (3-JCRF-2E-09).
- 51. The facility has controls to keep juveniles safely within the facility and to prevent unauthorized access by the general public (3-JCRF-2G-01).

C. Facility Operations (part III of JCRF manual)

1      2      3      4      5

- 52. Written policy limits physical force to self-protection, protection of juvenile or others, and prevention of property damage and escape (3-JCRF-3A-02).
- 53. Written policy provides that at least one staff person is readily available 24 hours a day, and is responsive to juveniles' needs (3-JCRF-3A-03).
- 54. Written policy provides that the staffing pattern concentrates

- staff when most juveniles are in the facility (3-JCRF-3A-04).
55. Written policy provides that no juvenile or group of juveniles is in a position of control or authority over other juveniles (3-JCRF-3A-05).
56. Written policy requires staff to keep a permanent log and to prepare shift reports that record both routine and unusual occurrences (3-JCRF-3A-06).
57. Written policy provides for the detection and reporting of absconders (3-JCRF-3A-08).
58. Written policy provides that staff monitor the movement of juveniles into and out of the facility (3-JCRF-3A-09).
59. Written policy provides that juveniles and adults not share sleeping rooms (3-JCRF-3A-10).
60. Written policy provides that male and female juveniles do not occupy the same sleeping rooms (3-JCRF-3A-11).
61. Written policy provides for searches to control contraband and its disposition at a level keeping with security needs (3-JCRF-3A-12).
62. Written policy governs the control and use of tools, equipment, and keys (3-JCRF-3A-13).
63. The facility complies with the regulations of the state or local fire safety authority, whichever has primary jurisdiction (3-JCRF-3B-01).
64. Written policy specifies fire prevention regulations and practices to ensure the safety of staff, juveniles, and visitors (3-JCRF-3B-02).
65. Written policy provides that the specifications for selecting and purchasing facility furnishings meet fire safety requirements (3-JCRF-3B-03).
66. Written policy provides that where smoking is permitted, noncombustible receptacles are available throughout living quarters (3-JCRF-3B-04).
67. Written policy governs the control and use of all flammable, toxic, and caustic materials (3-JCRF-3B-05).
68. The facility has a written evacuation plan for fire or major emergency that is certified by an independent outside fire safety inspector (3-JCRF-3B-06).
69. Written policy provides that fire drills are conducted at least monthly (3-JCRF-3B-07).
70. Written emergency plans are disseminated to appropriate local authorities (3-JCRF-3B-08).

#### INS Juvenile Shelter Care Standards Checklist

Rating 1–5:  
1=in compliance; 2=not in compliance;  
3= exception noted; 4=staff

- |  |                                      |
|--|--------------------------------------|
| <p>C. Facility Operations—Cont. (Part III of JCRF manual)</p> <p>71. Written policy provides that all facility personnel are trained in implementing written emergency plans (3-JCRF-3B-09).</p> <p>72. The facility has a fire alarm system and an automatic detection system approved by the authority having jurisdiction (3-JCRF-3B-10).</p> <p>73. For programs providing mass-transport vehicles, written policy requires a safety inspection, at least annually, by qualified persons (3-JCRF-3B-11).</p> <p>74. A written plan provides for continuous facility operation in the event of employee work stoppage or other job action (3-JCRF-3B-12).</p> <p>75. Written policy provides that there is a written set of disciplinary regulations governing juvenile rule violations (3-JCRF-3C-01).</p> <p>76. Written policy provides that all program rules and regulations are posted in an obvious place or are readily accessible in a handbook (3-JCRF-3C-02).</p> <p>77. Written policy ensures that room restriction does not exceed 8 hours without review and administrative authorization (3-JCRF-3C-11).</p> <p>78. Written policy ensures that the reasons for imposing restrictions or suspending privileges are discussed with the juvenile, who is given a chance to explain (3-JCRF-3C-12).</p> <p>79. Written policy provides that staff make visual and verbal contact with room-restricted juveniles at least every 30 minutes (3-JCRF-3C-13).</p> <p>80. Written policy provides that staff record, date, and sign all instances of room and facility restriction and privilege suspension (3-JCRF-3C-14).</p> <p>81. Written policy ensures a juvenile’s right to court access (3-JCRF-3D-01).</p> <p>82. Written policy ensures and assists juvenile access to counsel and their authorized representatives (3-JCRF-3D-02).</p> <p>83. Written policy provides that decisions about program access, work assignments, etc., disregard race, religion, national origin, sex (3-JCRF-3D-03).</p> <p>84. Written policy protects juveniles from corporal or other punishment that humiliates, abuses, or interrupts daily living functions (3-JCRF-3D-04).</p> <p>85. Written policy provides for the reporting of all instances of child abuse or neglect consistent with appropriate state or local laws (3-JCRF-3D-05).</p> <p>86. Written policy specifies the personal property that juveniles can</p> | <p>1      2      3      4      5</p> |
|--|--------------------------------------|

keep in their possession and governs its control and safeguarding (3-JCRF-3D-06).

87. Written policy provides for a grievance and appeal process (3-JCRF-3D-07).

D. Facility Services (Part IV of JCRF manual)

1 2 3 4 5

88. A nutritionist, dietitian, or physician approves the menu and annually approves the nutritional value of the food served (3-JCRF-4A-02).

89. Written policy provides that food service staff plan menus that they largely follow, giving attention to appearance and palatability (3-JCRF-4A-03).

90. There is a single menu for staff and juveniles (3-JCRF-4A-04).

91. Written policy provides for special diets as prescribed by appropriate medical or dental personnel (3-JCRF-4A-05).

92. Written policy provides for special diets for juveniles whose religious beliefs require adherence to religious dietary laws (3-JCRF-4A-06).

93. Food service staff complies with all sanitation and health codes enacted by state or local authorities (3-JCRF-4A-07).

94. Written policy provides for weekly inspections of food service areas, sanitary food storage, and daily temperature checks (3-JCRF-4A-08).

INS Juvenile Shelter Care Standards Checklist

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D. Facility Services—Cont. (Part IV of JCRF manual)

1 2 3 4 5

95. Written policy provides that staff members supervise juveniles during meals (3-JCRF-4A-09).

96. Written policy requires that at least three meals (of which two are hot) be served at regular meal times during each 24-hour period, with no more than 14 hours between the evening meal and breakfast (3-JCRF-4A-10).

97. The facility complies with the sanitation and health codes of the local and/or state jurisdiction (3-JCRF-4B-02).

98. Written policy provides for vermin and pest control and trash and garbage removal (3-JCRF-4B-03).

99. An independent, outside source has approved the institution’s potable water source and supply (3-JCRF-4B-04).

100. Written policy provides that a housekeeping and maintenance plan is in effect to ensure a clean facility that is in good repair (3-

JCRF-4B-05).

101. Juveniles are given the opportunity to have clean clothing (3-JCRF-4B-06).

102. The facility provides for the thorough cleaning and disinfecting of juvenile personal clothing before storage or wear (3-JCRF-4B-07).

103. Written policy provides for the issue of suitable clean bedding and linen, including sheets, pillow cases, mattress, and blankets (3-JCRF-4B-08).

104. Written policy requires the ready availability to juveniles of articles necessary for proper personal hygiene (3-JCRF-4B-09).

105. Written policy provides that the facility has a formal agreement with a designated health authority to provide health care services (3-JCRF-4C-01).

106. Written policy provides for access to health care and for a system for processing complaints regarding health care (3-JCRF-4C-02).

107. Appropriate state and federal licensure and other requirements/restrictions apply to providers of health care services to juveniles (3-JCRF-4C-03).

108. Written policy provides that treatment by nontraditional health care personnel is performed under authorized order or standing (3-JCRF-4C-04).

109. Written policy specifies the provision of mental health services to juveniles (3-JCRF-4C-05).

110. A suicide prevention/intervention program is reviewed and approved by a qualified medical or mental health professional (3-JCRF-4C-06).

111. When facilities do not have full-time, qualified, health personnel, a health-trained staff member coordinates health services delivery (3-JCRF-4C-07).

112. Written policy provides that the program's health care plan adheres to state and federal rules for storage and distribution of medicines (3-JCRF-4C-08).

113. Written policy requires medical, dental, and mental health screening by qualified health care personnel on all juveniles (3-JCRF-4C-09).

114. Written policy provides for the collection, recording, and review of health appraisal data to identify each juvenile's health care needs (3-JCRF-4C-11).

115. Written policy provides for medical examination of any employee or juvenile suspected of having a communicable disease (3-JCRF-4C-12).

116. Dental care is provided to each juvenile under the direction and supervision of a dentist licensed in the state (3-JCRF-4C-13).

117. Written policy provides for 24-hour emergency medical,



dental, and mental health care services as outlined in a detailed written plan (3-JCRF-4C-14).

118. Written policy provides that careworker staff and other personnel are trained to respond to health emergencies within 4 minutes (3-JCRF-4C-15).

INS Juvenile Shelter Care Standards Checklist

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| <b>D. Facility Services—Cont. (Part IV of JCRF manual)</b>   | 1 | 2 | 3 | 4 | 5 |
|--|---|---|---|---|---|
| 119. The facility has authoritatively approved first aid equipment available at all times (3-JCRF-4C-16).  |   |   |   |   |   |
| 120. Written policy provides that persons injured in an incident receive immediate medical examination and treatment (3-JCRF-4C-17).                             |   |   |   |   |   |
| 121. Written policy addresses the management of serious and infectious diseases (3-JCRF-4C-21).  |   |   |   |   |   |
| 122. Written policy specifies approved employee actions with regard to juveniles diagnosed with HIV (3-JCRF-4C-22).  |   |   |   |   |   |
| 123. Written policy prohibits the use of juveniles for medical, pharmaceutical, or cosmetic experiments (3-JCRF-4C-26).  |   |   |   |   |   |
| 124. Written policy provides that juveniles' parents/guardians are promptly notified in case of serious illness, surgery, injury, or death (3-JCRF-4C-27).       |   |   |   |   |   |
| 125. Juveniles' health record files contain the required forms and information (3-JCRF-4C-28).   |   |   |   |   |   |
| 126. For transferred juveniles, summaries or copies of the medical history record are forwarded to the receiving facility prior to or at arrival (3-JCRF-4C-29). |   |   |   |   |   |
| <b>E. Juvenile Services (Part V of JCRF Manual)</b>  | 1 | 2 | 3 | 4 | 5 |
| 127. The facility has clearly defined written policies, procedures, and practices governing admission (3-JCRF-5A-01).  |   |   |   |   |   |
| 128. The agency records basic information, as outlined, on each juvenile to be admitted (3-JCRF-5A-03).  |   |   |   |   |   |
| 129. Written policy provides that the facility inform a referring facility as to why a prospective juvenile is not accepted into the program (3-JCRF-5A-05).     |   |   |   |   |   |
| 130. Upon admission, staff discuss with the juvenile program goals, available services, rules, and possible disciplinary actions (3-JCRF-5A-07).                 |   |   |   |   |   |

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| 131. Written policy provides that the facility not discriminate on the basis of race, religion, national origin, gender, or disability (3-JCRF-5A-09).  |  |  |  |  |  |
| 132. The facility provides or arranges for a variety of services, such as food, education, counseling, recreation, transportation, etc. (3-JCRF-5A-12). |  |  |  |  |  |
| 133. Written policy provides that new juveniles receive written orientation materials and/or translations in their own languages (3-JCRF-5A-13).        |  |  |  |  |  |
| 134. Where a language or literacy problem can cause misunderstanding of rules and reg., staff must provide assistance to the juvenile (3-JCRF-5B-08).   |  |  |  |  |  |
| 135. Written policy provides that each juvenile is assigned a facility staff member who meets with and counsels him or her (3-JCRF-5C-02).              |  |  |  |  |  |
| 136. Written policy provides that staff members are available to counsel juveniles at their request, with provision for emergencies (3-JCRF-5C-03).     |  |  |  |  |  |
| 137. Written policy provides for coordination and continuity between educational, vocational, and work programs (3-JCRF-5D-01).                         |  |  |  |  |  |
| 138. Special education programs are available to meet the needs of special education students as defined in public law (3-JCRF-5D-02).                  |  |  |  |  |  |
| 139. Written policy shows compliance with laws pertaining to individual special education plans before juveniles are placed or removed (3-JCRF-5D-03).  |  |  |  |  |  |
| 140. Written policy provides that educational, vocational, work, and treatment program credits are accepted by community agencies (3-JCRF-5D-04).       |  |  |  |  |  |
| 141. Written policy provides that the use of work does not interfere with educational and treatment programs (3-JCRF-5D-05).                            |  |  |  |  |  |
| 142. Written policy provides for indoor and outdoor recreational and leisure time needs of juveniles (3-JCRF-5E-01).                                    |  |  |  |  |  |

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| <b>INS Juvenile Shelter Care Standards Checklist</b> | <b>Rating 1–5:</b><br>1=in compliance; 2=not in compliance;<br>3= exception noted; 4=staff information;<br>5=confirmed |
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| <b>E. Juvenile Services—Cont. (Part V of JCRF manual)</b>  | 1 | 2 | 3 | 4 | 5 |
|--|---|---|---|---|---|
| 143. Written policy provides that juveniles have the opportunity to participate in practices of their religious faiths (3-JCRF-5F-01). |   |   |   |   |   |
| 144. Written policy provides that indigent juveniles receive a specified postage allowance to maintain community ties (3-JCRF-5G-01).  |   |   |   |   |   |
| 145. Written policy governs juvenile access to publications (3-JCRF-5G-02).  |   |   |   |   |   |

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| 146. Written policy provides that juveniles' mail, both incoming and outgoing, may be opened and inspected for contraband (3-JCRF-5G-03).                    |  |  |  |  |  |
| 147. Written policy provides for the forwarding of first class letters and packages after transfer or release (3-JCRF-5G-04).                                |  |  |  |  |  |
| 148. Written policy provides for juvenile access to a telephone to make and receive personal calls (3-JCRF-5G-06).   |  |  |  |  |  |
| 149. Written policy allows juveniles to receive approved visitors, except where a threat to juvenile safety or program security is evidenced (3-JCRF-5G-06). |  |  |  |  |  |
| 150. Written policy provides for special visits (3-JCRF-5G-07).  |  |  |  |  |  |
| 151. Written procedures for releasing juveniles include several verification processes and other checks (3-JDF-5H-02).                                       |  |  |  |  |  |
| 152. Written policy provides for and governs escorted and unescorted day leaves into the community (3-JDF-5H-07).  |  |  |  |  |  |

#### Appendix 11-4.4 INS Secure Juvenile Shelter Care Standards Checklist

|   |  |          |          |          |          |
|---|--|----------|----------|----------|----------|
| <b>INS Secure Juvenile Standards Checklist</b>  | <b>Rating 1–5:</b><br>1=in compliance; 2=not in compliance;<br>3= exception noted; 4=staff information;<br>5=confirmed |          |          |          |          |
| <b>A. Administration and Management (Part I of <i>JDF</i> manual)<sup>11</sup></b>  | <b>2</b>   | <b>3</b> | <b>4</b> | <b>5</b> |          |
| 1. A criminal record check is performed on all new employees in accordance with state and federal statutes (3-JDF-1C-13).                       |  |          |          |          |          |
| 2. Written policy governs the management of case records, including all required areas (3-JDF-1E-01).   |  |          |          |          |          |
| 3. The facility administration maintains and has available in a master file a detailed record on each juvenile (3-JDF-1E-02).                   |  |          |          |          |          |
| 4. Written policy provides that an updated case file is transferred within 72 hours of a juvenile's transfer to another facility (3-JDF-1E-04). |  |          |          |          |          |
| 5. Written policy safeguards records from unauthorized and improper disclosure (3-JDF-1E-08).   |  |          |          |          |          |
| <b>B. Physical Plant (Part II of <i>JDF</i> manual)</b>   | <b>1</b>   | <b>2</b> | <b>3</b> | <b>4</b> | <b>5</b> |
| 6. The facility conforms to all applicable fire safety codes (3-JDF-2A-03).   |  |          |          |          |          |

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| 7. A qualified source has documented that finishing materials in juvenile living areas comply with recognized codes (3-JDF-2A-04).                        |  |  |  |  |  |
| 8. Juveniles' rooms and sleeping areas conform with all space requirements (3-JDF-2C-02).   |  |  |  |  |  |
| 9. Dayrooms for varied juvenile activities are separated from sleeping areas by a floor-to-ceiling wall (3-JDF-2C-04).                                    |  |  |  |  |  |
| 10. There is at least 1 toilet for every 12 male juveniles and 8 female juveniles; and at least 2 toilets in houses with 5 or more juveniles (JDF-2C-06). |  |  |  |  |  |
| 11. Juveniles have access to wash basins with hot and cold running water, at a ratio of 1 basin for every 12 occupants (3-JDF-2C-07).                     |  |  |  |  |  |
| 12. Juveniles have access to showers with temperature-controlled hot and cold running water, with at least 1 shower for every 8 juveniles (3-JDF-2C-08).  |  |  |  |  |  |
| 13. Male and female juveniles do not occupy the same sleeping room (3-JDF-2C-12).   |  |  |  |  |  |
| 14. Written policy provides that all housing areas comply with specified lighting and other environmental requirements (3-JDF-2D-01).                     |  |  |  |  |  |
| 15. Temperatures in indoor living and work areas are appropriate to summer and winter comfort zones (3-JDF-2D-03).  |  |  |  |  |  |
| 16. School classroom designs conform with local or state educational requirements (3-JDF-2E-05).  |  |  |  |  |  |
| 17. The food preparation area has space appropriate to population size, type of food preparation, and methods of meal service (3-JDF-2E-07).              |  |  |  |  |  |
| 18. Provisions exist for adequate storage and loading areas and for garbage disposal facilities (3-JDF-2E-08).  |  |  |  |  |  |
| 19. There is space in the facility to store and issue clothing, bedding, cleaning supplies, and other items required for daily operations (3-JDF-2E-11).  |  |  |  |  |  |
| 20. Space is provided for the safe and secure storing of juveniles' personal property (3-JDF-2E-12).  |  |  |  |  |  |
| 21. There is space for a 24-hour control center to monitor and coordinate the facility's security, safety, and communications systems (3-JDF-2G-01).      |  |  |  |  |  |
| 22. The facility's perimeter is controlled to keep juveniles in and the general public out, unless they have proper authorization (3-JDF-2G-02).          |  |  |  |  |  |

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| <b>INS Secure Juvenile Standards</b> | <b>Rating 1–5:</b><br>1=in compliance; 2=not in compliance;<br>3= exception noted; 4=staff information; |
|--------------------------------------|---|

| <b>Checklist</b>   | <b>5=confirmed</b> |          |          |          |          |
|--|--------------------|----------|----------|----------|----------|
| <b>C. Institutional Operations (part III of JDF manual)</b>  |                    |          |          |          |          |
|  | <b>1</b>           | <b>2</b> | <b>3</b> | <b>4</b> | <b>5</b> |
| 23. There is a manual containing all procedures for facility security and control, with detailed instructions for implementing them (3-JDF-3A-01).           |                    |          |          |          |          |
| 24. The facility has a communication system between the control center and juvenile living areas (3-JDF-3A-02).  |                    |          |          |          |          |
| 25. The facility maintains a daily report on juvenile population movement (3-JDF-3A-03).   |                    |          |          |          |          |
| 26. Written policy requires that coed facilities have both a male and a female staff member on duty at all times (3-JDF-3A-07).                              |                    |          |          |          |          |
| 27. Written policy requires staff to keep a permanent log and to prepare shift reports that record both routine and unusual occurrences (3-JDF-3A-09).       |                    |          |          |          |          |
| 28. Written policy requires at least weekly inspection and maintenance of all security devices, with corrective action taken as needed (3-JDF-3A-12).        |                    |          |          |          |          |
| 29. The facility has a system for physically counting juveniles (3-JDF-3A-13).   |                    |          |          |          |          |
| 30. Written policy provides that restraint devices are applied only with the facility administrator's approval, and never as punishment (3-JDF-3A-16).       |                    |          |          |          |          |
| 31. Written policy provides that the facility maintain a written record of routine and emergency distribution of restraint equipment (3-JDF-3A-17).          |                    |          |          |          |          |
| 32. All special incidents, e.g., hostage taking or use of force, are reported in writing, and dated and signed by the reporting staff person (3-JDF-3A-18).  |                    |          |          |          |          |
| 33. Written policy provides for searches of facilities and juveniles to control and dispose of contraband (3-JDF-3A-19).                                     |                    |          |          |          |          |
| 34. Written policy provides that manual or instrument inspection of body cavities is done only with reason and authorization (3-JDF-3A-20).                  |                    |          |          |          |          |
| 35. Written policy allows visual inspection of juvenile body cavities only when a reasonable belief exists that he/she is carrying contraband (3-JDF-3A-21). |                    |          |          |          |          |
| 36. Written policy governs the control and use of keys (3-JDF-3A-22).  |                    |          |          |          |          |
| 37. Written policy governs the control and use of tools and culinary and medical equipment (3-JDF-3A-23).  |                    |          |          |          |          |
| 38. Written policy governs the availability, control, and use of chemical agents and related security devices (3-JDF-3A-26).                                 |                    |          |          |          |          |
| 39. Written policy requires that personnel using force to control juveniles give a written report to the facility administrator by end of TDY (3-JDF-3A-27). |                    |          |          |          |          |
| 40. Written policy provides that persons injured in an incident receive immediate  |                    |          |          |          |          |

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| medical attention (3-JDF-3A-28).  |  |  |  |  |  |
| 41. Firearms are not permitted in facilities except in emergency situations (3-JDF-3A-29).  |  |  |  |  |  |
| 42. Written policy restricts the use of physical force to justifiable instances only, such as for self defense or protection of others (3-JDF-3A-30). |  |  |  |  |  |
| 43. Written policy specifies the facility's fire prevention regulations and practices (3-JDF-3B-01).  |  |  |  |  |  |
| 44. Written policy requires a comprehensive monthly compliance inspection of the facility by a qualified fire and safety officer (3-JDF-3B-02).       |  |  |  |  |  |
| 45. Specifications for selecting and purchasing facility furnishings indicate their fire safety performance requirements (3-JDF-3B-03).               |  |  |  |  |  |
| 46. Facilities have noncombustible receptacles for smoking materials, and separate containers for other combustible refuse (3-JDF-3B-04).             |  |  |  |  |  |
| 47. Written policy governs the control and use of all flammable, toxic, and caustic materials (3-JDF-3B-05).  |  |  |  |  |  |

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| <b>INS Secure Juvenile Standards Checklist</b> | <b>Rating 1–5:</b><br>1=in compliance; 2=not in compliance;<br>3= exception noted; 4=staff information;<br>5=confirmed |
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| <b>C. Institutional Operations—Cont. (part III of JDF manual)</b>   | 1 | 2 | 3 | 4 | 5 |
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| 48. Written policy requires a communications system within the facility and between it and the community for emergency situations (3-JDF-3B-07).      |   |   |   |   |   |
| 49. The facility has a certified evacuation plan for major emergencies (3-JDF-3B-10).   |   |   |   |   |   |
| 50. All facility personnel are trained in implementing written emergency plans (3-JDF-3B-11).   |   |   |   |   |   |
| 51. Written policy specifies juveniles' immediate release in case of emergency, with a backup system in place (3-JDF-3B-12).                          |   |   |   |   |   |
| 52. There are written procedures governing escapes that are reviewed at least annually and updated as needed (3-JDF-3B-13).                           |   |   |   |   |   |
| 53. Written rules of juvenile conduct specify prohibited acts within the facility and penalties for various degrees of violation (3-JDF-3C-02).       |   |   |   |   |   |
| 54. A rulebook of all chargeable offenses and consequences is given to each juvenile and staff member, in other languages as necessary (3-JDF-3C-03). |   |   |   |   |   |

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| 55. Written policy requires that juveniles are told the reasons behind imposed restrictions, and get an opportunity to explain themselves (3-JDF-3C-06).    |          |   |          |          |          |
| 56. During room restriction, staff contact is made with the juvenile at least every 15 minutes, depending on his/her emotional state (3-JDF-3C-07).         |          |   |          |          |          |
| 57. Written policy specifies room restriction for minor misbehavior only as a "cooling off" period, to last from 15 to 60 minutes (3-JDF-3C-08).            |          |   |          |          |          |
| 58. Written policy provides that juveniles who commit criminal acts are referred to appropriate court or law enforcement officials (3-JDF-3C-09).           |          |   |          |          |          |
| 59. A juvenile charged with a major rule violation, e.g., that imperils personal or another's safety, may be confined for up to 24 hours (3-JDF-3C-11).     |          |   |          |          |          |
| 60. Written policy ensures the right of juveniles to have access to courts (3-JDF-3D-01).   |          |   |          |          |          |
| 61. Written policy ensures and facilitates juvenile access to counsel and assists juveniles in making confidential contact with attorneys (3-JDF-3D-02).    |          |   |          |          |          |
| 62. Written policy protects juveniles from abuse, corporeal punishment, personal injury, disease, property damage, and harassment (3-JDF-3D-06).            |          |   |          |          |          |
| 63. A written grievance procedure is made available to all juveniles that includes at least one level of appeal (3-JDF-3D-08).                              |          |   |          |          |          |
| 64. Written policy provides special management for juveniles with serious behavior problems and for those requiring protective care (3-JDF-3E-01).          |          |   |          |          |          |
| 65. The facility administrator/shift supervisor can order immediate placement in a special location to protect juveniles from self or others (3-JDF-3E-02). |          |   |          |          |          |
| 66. The facility's sanctioning schedule sets a maximum of 5 days' disciplinary confinement for any offense, unless superseded by law (3-JDF-3E-03).         |          |   |          |          |          |
| 67. Juveniles placed in confinement are visually checked by staff every 15 minutes and are visited each day by the appropriate units (3-JDF-3E-04).         |          |   |          |          |          |
| 68. Written policy specifies that confined juveniles have living conditions and privileges similar to those for the general population (3-JDF-3E-05).       |          |   |          |          |          |
| <b>D. Facility Services (Part IV of JDF manual)</b>   | <b>1</b> | <b>2</b>  | <b>3</b> | <b>4</b> | <b>5</b> |
| 69. It is documented that the facility's system of dietary allowances is reviewed at least monthly by a dietitian for proper compliance (3-JDF-4A-03).      |          |   |          |          |          |
| 70. Written policy requires that food service staff plan out menus and stick to them, taking into account food appearance and palatability (3-JDF-4A-04).   |          |   |          |          |          |
| 71. Written policy provides for specially prescribed diets (3-JDF-4A-06).   |          |   |          |          |          |
| <b>INS Secure Juvenile Standards</b>  |          | <b>Rating 1–5:</b><br>1=in compliance; 2=not in compliance; |          |          |          |

| <b>Checklist</b>   | <b>3= exception noted; 4=staff information;<br/>5=confirmed</b> |          |          |          |          |
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| <b>D. Facility Services—Cont. (Part IV of JDF manual)</b>  | <b>1</b>  | <b>2</b> | <b>3</b> | <b>4</b> | <b>5</b> |
| 72. Written policy precludes the use of food as a disciplinary measure (3-JDF-4A-07).  |   |          |          |          |          |
| 73. Written policy specifies that food services comply with applicable sanitation and health codes (3-JDF-4A-09).  |   |          |          |          |          |
| 74. Shelved and refrigerated goods are maintained at the appropriate prescribed temperatures for each (3-JDF-4A-11).                                     |   |          |          |          |          |
| 75. Written policy provides that staff members supervise juveniles during meals (3-JDF-4A-12).   |   |          |          |          |          |
| 76. Written policy requires 3 meals a day, 2 of them hot, at regular meal times, with fewer than 14 hours between dinner and breakfast (3-JDF-4A-13).    |   |          |          |          |          |
| 77. Written policy provides for adequate health protection for all juveniles and staff in the facility and working in food service (3-JDF-4A-14).        |   |          |          |          |          |
| 78. Written policy requires weekly sanitation inspections of all facility areas (3-JDF-4B-01).   |   |          |          |          |          |
| 79. The facility administration complies with applicable sanitation codes (3-JDF-4B-02).   |   |          |          |          |          |
| 80. An independent, outside source has approved the institution's potable water source and supply (3-JDF-4B-03).   |   |          |          |          |          |
| 81. The institution has an approved waste disposal system (3-JDF-4B-04).   |   |          |          |          |          |
| 82. Written policy provides for vermin and pest control (3-JDF-4B-05).   |   |          |          |          |          |
| 83. Written policy specifies accountability for clothing and bedding issued to juveniles (3-JDF-4B-08).  |   |          |          |          |          |
| 84. Juveniles are afforded 3 complete sets of clean clothing per week (3-JDF-4B-10).   |   |          |          |          |          |
| 85. Written policy requires the facility to thoroughly clean and disinfect, as necessary, juvenile personal clothing being stored or worn (3-JDF-4B-11). |   |          |          |          |          |
| 86. Written policy provides for the issue of complete clean bedding and linen sets, with sufficient blankets for temperature comfort (3-JDF-4B-12).      |   |          |          |          |          |
| 87. Written policy provides an approved shower schedule that allows daily showers and showers after strenuous exercise (3-JDF-4B-13).                    |   |          |          |          |          |
| 88. Written policy requires that all juveniles receive articles necessary for maintaining proper personal hygiene (3-JDF-4B-14).                         |   |          |          |          |          |



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| 89. There are hair care services available to juveniles (3-JDF-4B-15).  |  |  |  |  |  |
| 90. Written policy provides that the facility has a contracted health authority with responsibility for health care (3-JDF-4C-01).                      |  |  |  |  |  |
| 91. Written policy provides that a staff member accompany a juvenile needing hospitalization at least through admission (3-JDF-4C-04).                  |  |  |  |  |  |
| 92. Adequate space, equipment, and supplies, as determined by the responsible physician, are provided for primary health care delivery (3-JDF-4C-06).   |  |  |  |  |  |
| 93. Written policy provides for unimpeded access to health care and for a system for processing health care complaints (3-JDF-4C-07).                   |  |  |  |  |  |
| 94. When sick call is not conducted by a physician, he/she is available once a week to answer juveniles' health care service complaints (3-JDF-4C-08).  |  |  |  |  |  |
| 95. Juveniles' medical complaints are monitored and responded to daily by medically trained personnel (3-JDF-4C-09).                                    |  |  |  |  |  |
| 96. Appropriate state and federal licensure and registration requirements apply to personnel providing health care services to juveniles (3-JDF-4C-10). |  |  |  |  |  |

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| <b>INS Secure Juvenile Standards Checklist</b>  | <b>Rating 1–5:</b><br>1=in compliance; 2=not in compliance;<br>3= exception noted; 4=staff information;<br>5=confirmed |          |          |          |          |
|   |  |          |          |          |          |
| <b>D. Facility Services—Cont. (Part IV of JDF manual)</b>   | <b>1</b>   | <b>2</b> | <b>3</b> | <b>4</b> | <b>5</b> |
| 97. Written policy provides that treatment by other than licensed health care personnel is performed under a physician's orders (3-JDF-4C-11).        |  |          |          |          |          |
| 98. A juvenile's immunization history is obtained when the health appraisal data are collected; immunizations are updated, as required (3-JDF-4C-13). |  |          |          |          |          |
| 99. Obstetrical, gynecological, family planning, and health education services are provided in facilities housing females (3-JDF-4C-14).              |  |          |          |          |          |
| 100. Written policy specifies the provision of mental health services for juveniles (3-JDF-4C-16).  |  |          |          |          |          |
| 101. When facilities lack full-time, qualified health-trained personnel, a trained staff member coordinates supervised health services (3-JDF-4C-17). |  |          |          |          |          |
| 102. Written policy provides for the proper management of pharmaceuticals (3-JDF-4C-18).  |  |          |          |          |          |
| 103. Psychotropic drugs and drugs requiring parenteral administration are   |  |          |          |          |          |

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| prescribed by a physician or provider, following an exam (3-JDF-4C-19).   |  |  |  |  |  |
| 104. The person administering medications has training from the responsible physician/official, is accountable for administering medications, and appropriately records their administration (3-JDF-4C-20). |  |  |  |  |  |
| 105. Written policy requires that all juveniles, upon arrival, receive thorough health screenings by qualified personnel (3-JDF-4C-21).   |  |  |  |  |  |
| 106. Written policy requires that all juveniles receive thorough health screenings upon their arrival from intrasystem transfers (3-JDF-4C-23).   |  |  |  |  |  |
| 107. Written policy provides for the collection and recording of health appraisal data in accordance with prescribed procedures (3-JDF-4C-24).  |  |  |  |  |  |
| 108. Written policy provides for 24-hour emergency health care availability as outlined in a detailed written plan (3-JDF-4C-26).   |  |  |  |  |  |
| 109. Written policy provides that personnel are trained to respond to health-related situations within 4 minutes (3-JDF-4C-27).   |  |  |  |  |  |
| 110. Written policy requires that first aid kits are available (3-JDF-4C-28).   |  |  |  |  |  |
| 111. Sick call for nonemergency medical service by a physician or counterpart is available to each juvenile at least 3 times a week (3-JDF-4C-29).  |  |  |  |  |  |
| 112. Written policy provides for a special health program for juveniles requiring close medical supervision (3-JDF-4C-30).  |  |  |  |  |  |
| 113. Chronic care, convalescent care, and medical preventive maintenance are provided to juveniles when medically indicated (3-JDF-4C-31).  |  |  |  |  |  |
| 114. There is a written agreement between the facility and a nearby hospital for all medical services that cannot be provided at the facility (3-JDF-4C-33).  |  |  |  |  |  |
| 115. A written suicide and intervention program is reviewed and approved by a qualified medical or mental health professional (3-JDF-4C-35).  |  |  |  |  |  |
| 116. Written policy specifies approved actions to be taken by employees concerning juveniles diagnosed as HIV positive (3-JDF-4C-36).   |  |  |  |  |  |
| 117. Written policy addresses the management of serious and infectious diseases (3-JDF-4C-37).  |  |  |  |  |  |
| 118. Written policy provides for medical examination of any employee or juvenile believed to have a communicable disease (3-JDF-4C-38).   |  |  |  |  |  |
| 119. Written policy prohibits using juveniles for medical, pharmaceutical, or cosmetic experiments (3-JDF-4C-43).   |  |  |  |  |  |
| 120. Stimulants, tranquilizers, or psychotropic drugs are never used for program management, control, experiment, or research purposes (3-JDF-4C-44).   |  |  |  |  |  |
| <b>INS Secure Juvenile Standards Checklist</b>  | <b>Rating 1–5:<br/>1=in compliance; 2=not in compliance;</b> |  |  |  |  |

|   | 3= exception noted; 4=staff information; 5=confirmed |   |   |   |   |
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| <b>D. Facility Services—Cont. (Part IV of JDF manual)</b>   |  |   |   |   |   |
|   | 1  | 2 | 3 | 4 | 5 |
| 121. Written policy provides that juveniles' parents/guardians are promptly notified in case of serious illness, surgery, injury, or death (3-JDF-4C-45).       |  |   |   |   |   |
| 122. Juveniles' health record files contain complete and proper records that are maintained in a manner approved by the health authority (3-JDF-4C-46).         |  |   |   |   |   |
| 123. Written policy upholds the principle of the health record's confidentiality, and supports particular requirements (3-JDF-4C-47).                           |  |   |   |   |   |
| 124. Summaries or copies of a juvenile transferee's medical history records are forwarded to the receiving facility before his or her arrival (3-JDF-4C-48).    |  |   |   |   |   |
| <b>E. Juvenile Services (Part V of JDF Manual)</b>  |  |   |   |   |   |
|   | 1  | 2 | 3 | 4 | 5 |
| 125. Written procedures for admitting juveniles new to the system include all the required elements and steps (3-JDF-5A-02).                                    |  |   |   |   |   |
| 126. Written policy provides that new juveniles receive written orientation materials and/or translations in their own language (3-JDF-5A-15).                  |  |   |   |   |   |
| 127. Written policy governs the control and safeguarding of juvenile personal property (3-JDF-5A-16).   |  |   |   |   |   |
| 128. Written policy provides that staff members are available to counsel juveniles at their request, even on an emergency basis (3-JDF-5B-04).                  |  |   |   |   |   |
| 129. Written policy provides for juvenile access to mental health counseling and crisis intervention services, according to need (3-JDF-5B-05).                 |  |   |   |   |   |
| 130. There is a comprehensive education program for juveniles (3-JDF-5C-01).  |  |   |   |   |   |
| 131. The educational program is supported by specialized equipment that meets minimum state education standards (3-JDF-5C-03).                                  |  |   |   |   |   |
| 132. Juveniles are not required to work for free except as part of facility upkeep, personal hygiene, or approved training or service program (3-JDF-5C-05).    |  |   |   |   |   |
| 133. Juveniles are not permitted to perform any work prohibited by state and federal regulations and statutes pertaining to child labor (3-JDF-5C-06).          |  |   |   |   |   |
| 134. Library services are provided and available to all juveniles (3-JDF-5D-03).  |  |   |   |   |   |
| 135. Written policy provides a recreation-leisure plan that daily allows at least 1 hour each for large muscle and structured leisure activities (3-JDF-5E-04). |  |   |   |   |   |
| 136. Written policy allows juveniles to practice the tenets of their religions, limited only by a documented threat to safety or order (3-JDF-5F-03).           |  |   |   |   |   |

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| 137. Written policy for juveniles' correspondence is made available to all staff and juveniles, is reviewed annually, and updated as needed (3-JDF-5G-01).  |  |  |  |  |  |
| 138. There is no limit on the volume of letters a juvenile may send or receive, when he/she bears the mailing cost (3-JDF-5G-02).                           |  |  |  |  |  |
| 139. Written policy provides that indigent juveniles, as defined in policy, receive a specified postage allowance to maintain community ties (3-JDF-5G-03). |  |  |  |  |  |
| 140. Written policy specifies that juveniles are permitted to send sealed letters to a specified class of persons and organizations (3-JDF-5G-04).          |  |  |  |  |  |
| 141. Written policy grants juveniles the right to communicate/correspond freely, limited only by preservation of facility security and order (3-JDF-5G-05). |  |  |  |  |  |
| 142. Written policy provides that all juveniles' mail—incoming and outgoing— may be opened and inspected for contraband (3-JDF-5G-07).                      |  |  |  |  |  |
| 143. Written policy requires that all cash received in the mail is held for the juvenile under procedures approved by the parent agency (3-JDF-5G-08).      |  |  |  |  |  |
| 144. Written policy requires that incoming and outgoing letters are held for no more than 24 hours, and packages no more than 48 hours (3-JDF-5G-09).       |  |  |  |  |  |

**INS Secure Juvenile Standards Checklist**

**Rating 1–5:**  
 1=in compliance; 2=not in compliance;  
 3= exception noted; 4=staff information;  
 5=confirmed

| <b>E. Juvenile Services—Cont. (Part V of JDF manual)</b>  | 1 | 2 | 3 | 4 | 5 |
|---|---|---|---|---|---|
| 145. Written policy provides for the forwarding of first class letters and packages after transfer or release (3-JDF-5G-10).                            |   |   |   |   |   |
| 146. Written policy provides for juvenile access to the telephone to make and receive personal calls (3-JDF-5G-11).                                     |   |   |   |   |   |
| 147. Written policy grants juveniles the right to receive visits, limited only by the need to maintain facility order and security (3-JDF-5G-12).       |   |   |   |   |   |
| 148. Written policy provides that juvenile visiting facilities permit informal communication, including opportunity for physical contact (3-JDF-5G-13). |   |   |   |   |   |
| 149. Written policy governs special visits (3-JDF-5G-14).   |   |   |   |   |   |
| 150. Written policy specifies that visitors register on entry and states the circumstances governing visitor searches and supervision (3-JDF-5G-15).    |   |   |   |   |   |
| 151. Written procedures for releasing juveniles include several verification processes and other checks (3-JDF-5H-02).                                  |   |   |   |   |   |

|   |  |  |  |  |  |
|---|--|--|--|--|--|
| 152. Written policy provides for and governs escorted and unescorted day leaves into the community (3-JDF-5H-07). |  |  |  |  |  |
|---|--|--|--|--|--|

## **Appendix 11-5 Designation of National Security Matters, Memorandum, dated December 18, 2002**

[Designation of National Security Matters, Memorandum, dated December 18, 2002](#)

## **Appendix 11-6 NTA Service on Former Military Checklist**

### NTA SERVICE ON FORMER MILITARY CHECKLIST

1. Written request for approval to the Assistant Regional Director of Investigations from the Supervisor for issuance of the NTA.

2. Submit the following to the Region:

a) Narrative of the situation, to include information relating to:

INS history

Military history

Criminal record

Marital status

Employment status

Children

Other family

Property owned

Why prosecutorial discretion shouldnt be exercised

b) Copy of I-213 (optional)

c) Copy of criminal history (optional)

- d) Copy of J&C (optional)
- e) Copy of dd-214 or statement from agent of proof provided)
- 3. Memorandum to the Assistant Regional Director of Investigations signed by the Supervisor.
- 4. Fax to the Region.
- 5. Expect 24-48 hour for response call to check on the status if longer.

## **Appendix 11-7 Sample Stipulated Removal**

UNITED STATES DEPARTMENT OF JUSTICE

EXCECUTIVE OFFICE FOR IMMIGRATION REVIEW

OFFICE OF THE IMMIGRATION JUDGE

(CITY, STATE)

IN THE MATTER OF:

)

EN EL ASUNTO DE:

)

)

IN REMOVAL PROCEEDINGS

)

EN LOS TRAMITES DE EXPULSION

\_\_\_\_\_

)

RESPONDENT

)

A-FILE NO. \_\_\_\_\_

)

NUMERO DE REGISTRO

)

)

BOP NO. \_\_\_\_\_

)

NUMERO DE BOP

RESPONDENTS STIPULATED REQUEST FOR REMOVAL ORDER AND WAIVER OF HEARING PURSUANT TO 8 CFR 3.25(b)

SOLICITUD DEMANDADO PARA EMISION DE LA ORDEN ESTIPULADA:  
RENUNCIA DE AUDENCIA BAJO EL TOMO 8 DEL CODIGO DE REGULACIONES FEDERALES SECCION 3.25(b)

I, \_\_\_\_\_, Respondent in the above entitled removal proceedings, hereby submit the following request, statements, admissions and stipulations:

Yo, \_\_\_\_\_, el demandado en los procedimientos arriba mencionados, solicito, declaro, y admito lo siguiente en referencia a esta SOLICITUD DEL DEMANDADO PARA EMISION DE LA ORDEN ESTIPULADA Y RENUNCIA DE AUDENCIA.

I have been served with a copy of the Immigration and Naturalization Service Form I-852, Notice to Appear (NTA), dated \_\_\_\_\_, and it cites my full, true, and correct name.

He sido servido con una copia del formulario I-862 del Servicio de Inmigracion, Notificacion de Comparecer (NTA) con fecha, \_\_\_\_\_, y contiene mi nombre completo, verdadero, y correcto.

I have received a copy of the LIST OF FREE LEGAL SERVICE PROVIDERS. I am aware that, pursuant to 8 CFR 240.3, I may be represented by an attorney or other representatives qualified under 8 CFR 292.

He recibido copia de La Lista De Servicios Legales Gratuitos. Reconozco que bajo el Tomo 8 del Codigo de Regulaciones Federales seccion 240.3, puedo ser representado por un abogado u otro representante acreditado bajo la seccion 292 del mismo tomo. No deseo

representacion legal en este proceso por un abogado o representante. He decidio representarme a mi mismo durante el proceso.

I fully understand my rights in this proceeding contained within 8 CFR 240.10 and 240.11. I understand that in a removal hearing, I would have the right to representation, a reasonable opportunity to examine and object to the evidence against me, to present witnesses in my own behalf, to cross examine witnesses presented by the government, to object to government evidence including written statements I have made, offer evidence of my own, have all matters on the record recorded verbatim, and, if charged with being deportable, demand that the government prove that I am removable from the United States. Knowing this, I hereby waive these rights, and request that my removal proceeding be conducted solely by way of written record without a hearing.

Entiendo mis derechos bajo el proceso de expulsion identificado en el Tomo 8 del Codigo de Regiamentos Federales seccion 240.10 y 240.11. Reconozco que tengo asimismo derecho a una audiencia ante un juez de inmigracion. Reconozco que una audiencia tengo el derecho a ser representado, la oportunidad razonable de examinar y objetar la evidencia presentada en mi contra, presentar testigos en mi favor, hacer preguntas a los testigos presentados por el gobierno, presentar mi propia evidencia, mi derecho a documentar este proceso palabra por palabra, y de ser declarado inadmisibile or deportable, exigir que el gobierno pruebe que me puede deportar de los Estados Unidos. Conociendo lo aqui mencionado, renuncio a estos derechos, y solicito que mi proceso de expulsion se lleve a cabo en base a la documentacion existente sin una audiencia individual.

I admit that all the factual allegations contained in the Form I-862, Notice to Appear, are true and correct as written.

Admito que todos los alegatos en el documento acusatorio del Servicio de Inmigracion formulario I-862, son verdaderos y correctos como documentados.

I do not wish to apply for relief from removal pursuant to the Immigration and Nationality Act (hereinafter the Act). I am not seeking the relief of voluntary departure, asylum, adjustment of status, registry, review of a termination of conditional resident status, review of a denial or revocation of temporary protected status, family unity benefits, legalization benefits, cancellation of removal, naturalization, or any other possible relief or other benefits under the Act.

No deseo solicitar recurso alguno a la orden de expulsion bajo el Acta de Inmigracion Y Nacionalidad (de aqui en adelante el Acta). No solicito el recurso de salida voluntaria, asilo, cambio de estado migratorio, registro, nueva revision de terminacion de estado de residente condicional, nueva revision de negacion o revocacion de estado proteccion temporal, beneficios para la union de familias, beneficios de legalizacion, anulacion de expulsion, naturalizacion, ni cualquier otro recurso o beneficio posible bajo el Acta.



Pursuant to Section 241(b)(2)(A)( i) of the Act, I hereby designate \_\_\_\_\_ as the country designated for removal.

Conforme a la seccion 241 (b)(2)(A)( i) del Acta, Designo a \_\_\_\_\_ como el pais al cual deseo ser trasladado si soy expulsado.

I consent to the introduction of this Stipulated Request for Order, Waiver of Hearing as an exhibit to the Record of Proceedings.

Comprendo y estoy de Acuerdo que esta Solicitud del Demandado para Emision de la Orden Estipulada; Renuncia de Audencia forme parte de mi expediente en procedimientos de expulsion.

I understand the consequences of this Stipulated Request for Order, Waiver of Hearing are that I will be removed from the United States. I make this request voluntarily, knowingly, and intelligently.

Reconozco que la concecuencia de esta Solicitud del Demandado para Emision de la Orden Estipulada Renuncia de Audencia es mi expulsion de Los Estados Unidos. Hago esta solicitud voluntariamente, conocimiento, e inteligentemente.

I agree to accept a written order for my removal as a final disposition of these proceedings.

Estoy de acuerdo y acepto una orden por escrito de mi expulsion como disposicion final de este procedimiento.

I waive appeal of the written order of removal from the United States.

Renuncio al derecho de apelar esta orden escrita sobre mi expulsion de los Estado Unidos.

I have carefully read or have had read to me in my native language this entire document, and fully understand its consequences. I am aware that my eventual removal from the United States will be the result of my signing this document.

Yo he leído cuidadosamente o se me ha leído todo el contenido de este documento en mi lengua nativa y entiendo las concecuencias. Yo entiendo que mi eventual expulsion de Los Estados Unidos resultara de que yo firme este documento.

I, the undersigned respondent (alien), certify that all the information in this document is true and correct and I sign this document under the pains and penalties of perjury, pursuant to Title 28, United States Code, Section 1746, on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Yo, el demandado suscrito (extranjero), certifico que toda la informacion contenida en este documento es verdadera y correcta y firmo este documento reconociendo las penalidades de perjurio, segun el Titlulo 28,Codigo de Estados Unidos, Seccion 1746, en este dia \_\_\_\_\_ de \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Signature of Respondent

Firma del Demandado

\_\_\_\_\_  
Printed Name of Respondent

Letra de molde del Demandado

\_\_\_\_\_  
Signature of Witness

Firma de Testigo

\_\_\_\_\_  
Printed Name of Witness

Letra de molde del Testigo

\_\_\_\_\_  
Signed on Behalf of the Government

Assistant District Counsel

City, State

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

## **Appendix 12-1 Bond Worksheet**

[Bond Worksheet](#)

## **Appendix 12-5 Bond Management Information System (BMIS)**

# **Appendix 14-1 Administrative Removal Proceedings Manual (M-430)**

Administrative Removal Proceedings

Manual

(M-430, Rev. June 4, 1999)

Detention and Deportation Officers' Field Manual

Appendix 14-1

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## PREFACE

The law authorizes alternative administrative removal proceedings without hearings before immigration judges for serious criminal offenders. These proceedings apply to certain aliens who have been convicted of one or more aggravated felonies. While incorporating both procedural safeguards and effective quality control methods, the proceedings simplify and expedite removal from the United States. This manual is a ready reference explaining how to do cases under the alternative proceedings. The information in the manual is current as of the date shown on the cover but is subject to change.

## I. INTRODUCTION

### A. Purpose

This manual is a comprehensive guide for Immigration and Naturalization Service (INS) employees in the processing and adjudication of administrative removal cases. These cases relate to certain aliens who have been convicted of one or more aggravated felonies and who are not lawful permanent residents of the United States. Aliens with conditional permanent resident status as the spouses, sons, and daughters of U.S. citizens or lawful permanent residents are not lawful permanent residents for this purpose.

The manual describes in detail the applicable law, regulations, and procedures. The purpose of the manual is to serve as a reference for and assist in training INS officers and support personnel who participate in the administrative removal process. The manual supplements the regulations in providing for a process which works efficiently while respecting procedural due process and fitting sensibly within the usual routine of investigating cases and initiating removal proceedings.

Previously, most traditional removal cases required hearings before immigration judges (IJ's). As part of the continuing efforts to streamline removal procedures, INS officers may issue final removal orders in administrative removal cases. In view of the seriousness of this responsibility, case processing and adjudication require careful, effective quality control measures. The manual is a major component of the administrative removal quality assurance program.

The manual gives step-by-step explanations on the methods necessary to ensure compilation of thorough records of proceeding (ROP's), adherence to administrative due

process and appropriate procedures, and preparation of consistent, legally sufficient decisions. The manual emphasizes the need to create and maintain, on a permanent basis, ROP's that are able to withstand legal challenges or support later proceedings relating to criminal reentry after removal. Following the instructions outlined in the manual will facilitate the uniform and fair adjudication of cases and, when appropriate, the issuance of even-handed, high quality, and legally defensible supplemental written decisions.

The INS developed this manual in close consultation with its Office of the General Counsel using extensive legal materials furnished by that Office. For example, that Office provided the guidance on creating and maintaining the ROP, judicial review, and legal issues, as well as furnishing all legal citations. Legal questions which are not answered in the manual may be referred to an INS attorney.

## B. Historical Background

Since 1986, as part of a general trend in the law toward stricter criminal provisions, Congress has made numerous amendments to the [Immigration and Nationality Act \(INA\)](#) affecting removal of criminal aliens from the United States. For example, the comprehensive [Immigration Reform and Control Act of 1986 \(IRCA\)](#) amended the INA to require initiation of removal proceedings "as expeditiously as possible after conviction" of an offense making an alien subject to removal. The text of IRCA itself declared, "[i]t is the sense of the Congress that...the immigration laws of the United States should be enforced vigorously and uniformly."

Legislative changes starting in 1988 introduced the term "aggravated felony" to immigration law and emphasized removal of aliens convicted of crimes fitting its definition. Examples of crimes now defined as aggravated felonies are murder, rape, sexual abuse of minors, child pornography, certain crimes of violence, and illicit trafficking in controlled substances, firearms, and destructive devices. Current law provides for mandatory detention of aliens in removal proceedings who have been convicted of these crimes.

In 1994, several measures to improve criminal alien removal were signed into law. These included expedited administrative deportation without a hearing before an immigration judge (IJ) for an alien convicted of an aggravated felony who is not a lawful permanent resident and who is not eligible for any relief from removal. Through this legislation, Congress provided for a more streamlined removal process, incorporating statutorily provided procedural safeguards, to simplify and expedite removal in certain cases involving serious criminal offenses.

More recently, the trend towards expediting removal of criminal aliens through statutory change engendered the Antiterrorism and Effective Death Penalty Act of 1996 ([AEDPA](#)) and the subsequent Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ([IIRIRA](#)). The latter made major changes such as replacing the separate exclusion and deportation processes with a single removal proceeding for deciding both inadmissibility and deportability.

AEDPA made several changes affecting the administrative deportation procedure for aliens convicted of aggravated felonies. IIRIRA modified or eliminated some of these changes. The current expedited procedure, now called administrative removal, also includes aliens who have lawful permanent residence on a conditional basis as the spouses, sons, and daughters of U.S. citizens and lawful permanent residents. Another change makes aliens subject to this procedure ineligible for any discretionary relief from removal.

However, the law requires withholding of removal to a country where the alien's life or freedom would be threatened in the case of an alien convicted of an aggravated felony or felonies for which the alien has been sentenced to an aggregate term of imprisonment of less than five years, unless the crime is determined to be a particularly serious crime. In addition, regulations that became effective on March 22, 1999 prohibit the removal of an alien to a country where he or she would be tortured regardless of any criminal convictions or background the alien may have. The regulations establish a special screening mechanism, with referral of cases that may trigger either of these provisions to an IJ for adjudication.

### C. Legal Authority For Administrative Removal

The Violent Crime Control and Law Enforcement Act of 1994 (VCCLEA), Public Law 103-322, was enacted September 13, 1994 and became effective September 14, 1994. Section 130004 of VCCLEA amended the Immigration and Nationality Act (INA) to eliminate administrative hearings before immigration judges (IJ's) for certain criminal aliens. Section 130004 also amended the INA to limit judicial review in these cases.

The Immigration and Nationality Technical Corrections Act of 1994 (INTCA), [Public Law 103-416](#), enacted October 25, 1994, made minor technical changes to these statutory provisions. The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), [Public Law 104-132](#), enacted April 24, 1996, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), [Public Law 104-208](#), enacted September 30, 1996, further amended these provisions.

Current [section 238\(b\)](#) of the INA authorizes, under regulations prescribed by the Attorney General, administrative removal proceedings without a hearing before an IJ to determine deportability under [section 237\(a\)\(2\)\(A\)\(iii\)](#) of the INA and to issue a removal order. [Section 237\(a\)\(2\)\(A\)\(iii\)](#) relates to conviction of an aggravated felony, as defined in [section 101\(a\)\(43\)](#) of the INA.

[Section 238\(b\)](#) of the INA requires that, when proceedings under that section of law begin, the alien must not have been lawfully admitted for permanent residence. Conditional permanent residents under [section 216](#) of the INA are not lawful permanent residents for purposes of administrative removal proceedings under section 238(b). Section 216 relates to certain spouses, sons, and daughters of U.S. citizens and lawful permanent resident aliens.

Section [238\(b\)\(5\)](#) of the INA states that no alien subject to these proceedings is eligible for any relief from removal. Section [241\(b\)\(3\)](#) of the INA, however, requires withholding of removal to a country where the alien's life or freedom would be threatened. This provision, however, does not apply if the alien is subject to certain bars to withholding of removal including, among other grounds, conviction of a particularly serious crime. An alien is considered to have been convicted of a particularly serious crime if the alien has been sentenced to an aggregate term of imprisonment of five or more years for an aggravated felony or felonies, not taking into account any suspension of imposition or execution of the sentence. An aggravated felony for which the alien has been sentenced to an aggregate term of imprisonment of less than five years may still constitute a particularly serious crime, depending on the crime.

On October 21, 1998, the President signed into law the Foreign Affairs Reform and Restructuring Act of 1998, [Public Law 105-277](#). That legislation mandates promulgation of regulations to implement U.S. obligations under Article 3 of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT). Article 3 prohibits the removal of any person to a country where he or she would be tortured, with no exceptions for persons with criminal or other background. Neither section [241\(b\)\(3\)](#) nor Article 3 of the CAT are subject to the section [238\(b\)\(5\)](#) prohibition on relief for aliens in these proceedings. As a legal matter, neither of these provisions constitutes relief from removal because they are merely restrictions on the place to which an alien may be removed and do not constitute affirmative permission to remain in the United States.

As reflected in the applicable regulations at [8 CFR 238.1\(b\)\(1\)\(iv\)](#), by operation of section [238\(c\)](#) of the INA, even aliens who entered without inspection may be removed through administrative removal proceedings. [Section 238\(b\)\(3\)](#) of the INA provides that a removal order issued under section 238(b) of the INA may not be executed for 14 calendar days, unless the alien waives the 14-day period.

[Section 238\(b\)\(4\)](#) of the INA lists procedural safeguards the Attorney General must afford the alien. These include reasonable notice of the "charges" and of the opportunity to inspect the evidence and rebut the "charges," as well as the actual reasonable opportunity to inspect the evidence and rebut the "charges." A determination must be made for the record that the individual upon whom the notice is served is, in fact, the alien named in the notice. The alien must also be given the privilege of being represented, at no expense to the Government, by authorized counsel of his or her own choosing. Further, a record must be maintained for judicial review. Finally, the same person cannot issue the charges and make the decision to issue the final removal order.

#### D. The Regulations Implementing Administrative Removal

The administrative removal regulations were originally published on August 24, 1995 with an effective date of September 25, 1995. On March 6, 1997, the regulations were revised to conform with statutory changes, became effective April 1, 1997, and were



published in [8 CFR 238.1](#). Further important regulatory amendments were published on February 19, 1999 and became effective on March 22, 1999. [64 FR 8478 \(1999\)](#).

These regulations authorize a Deciding Service Officer (DSO) to issue a Final Administrative Removal Order under [section 238\(b\)](#) of the Immigration and Nationality Act (INA) on [Form I-851A](#). They implement the administrative removal process described in this manual. The process begins when an Issuing Service Officer (ISO) serves a charging document called a Notice of Intent to Issue a Final Administrative Removal Order (NOI) on [Form I-851](#).

A DSO may be a district director, a chief patrol agent, or that official's designated representative. The ISO may be any Immigration and Naturalization Service (INS) officer listed in [8 CFR 239.1](#) as authorized to issue a Notice to Appear to begin removal proceedings before an immigration judge (IJ) under [section 240](#) of the INA. In accordance with the statute, the regulations state that the DSO and the ISO cannot be the same person.

The regulations incorporate all statutorily required procedural safeguards and demand clear, convincing, and unequivocal evidence in support of the deportability charge. Additionally, the regulations provide for either verbal explanation or written translation of the NOI in the alien's native language or a language the alien understands, and require that a list of available free legal services be provided the alien.

The regulations also provide that the NOI must inform the alien that he or she may request withholding of removal to a particular country if he or she fears persecution or torture there. If the alien requests withholding of removal, he or she is referred, upon issuance of a Final Administrative Removal Order, to an asylum officer for a screening process to determine whether the alien has a "reasonable fear" of persecution or torture under [8 CFR 208.31](#). If the alien passes the screening process, he or she is referred to an IJ for an adjudication of whether the alien can be returned to the country in question. In addition, the alien may request IJ review of a negative screening determination by an asylum officer.

The regulations provide for termination of proceedings under [section 238\(b\)](#) of the INA when the DSO finds the alien not amenable to administrative removal. If appropriate, the INS may then begin removal proceedings before an IJ.

The regulations include, by operation of [section 238\(c\)](#) of the INA, among those persons subject to administrative removal proceedings, aliens convicted of aggravated felonies who have not been admitted or paroled into the United States. Section 238(c) of the INA states that "(a)n alien convicted of an aggravated felony shall be conclusively presumed to be deportable from the United States." Therefore, as reflected in the applicable regulations at [8 CFR 238.1\(b\)\(1\)\(iv\)](#), even aliens who entered without inspection may be removed through administrative removal proceedings.

Neither the statute nor the regulations provide for appeal to the Board of Immigration Appeals (BIA) of a DSO's decision entering a Final Administrative Removal Order. In accordance with the law, the regulations require that a record of proceeding (ROP) be maintained "for judicial review...sought by any petition for review."

An alien convicted of an aggravated felony who is subject to administrative removal proceedings is subject to the same detention requirements as any other alien convicted of an aggravated felony. The regulations specify that the INS decision concerning custody or bond is not administratively appealable during the administrative removal process. Since IJ's do not take part in this process, they may not consider or rehear the INS custody or bond decision. The alien's remedy is to file a habeas corpus petition in Federal District Court.

## II. OVERVIEW

### A. Criteria

The administrative removal process relates to an alien who is not a lawful permanent resident when the process begins and who has a final conviction for an aggravated felony. Before starting this process, the officer encountering the alien must consider the following factors:

- (1) Alienage. At the outset, there must be a determination of alienage. The investigation must disclose that there is clear, convincing, and unequivocal evidence that the subject is an alien, that is, neither a citizen nor a national of the United States.
- (2) Immigration status (not a lawful permanent resident). The subject is not a lawful permanent resident. An alien who is a conditional permanent resident under [section 216](#) of the Immigration and Nationality Act (INA) as the spouse, son, or daughter of a U.S. citizen or lawful permanent resident is not a lawful permanent resident for purposes of administrative removal proceedings. Immigration and Naturalization Service (INS) records must corroborate the subject's immigration status.
- (3) The existence of a final conviction for an aggravated felony. Deportability based upon a conviction of an aggravated felony, as defined by [section 101\(a\)\(43\)](#) of the Immigration and Nationality Act (INA), must be established. The public record must be demonstrative of a final conviction for an aggravated felony in a state or Federal court.

### B. Procedural Protections

An alien whose life or freedom would be threatened in a specific country or who would be tortured in that country may request withholding of removal. This can be granted under either [section 241\(b\)\(3\)](#) of the Immigration and Nationality Act (INA) or Article 3 of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT).

[Section 241\(b\)\(3\)](#) requires that an alien's removal to a particular country be withheld if it is more likely than not that the alien's life or freedom would be threatened there on account of race, religion, nationality, membership in a particular social group, or political opinion. This provision, however, does not apply if the alien is subject to certain bars to withholding of removal including, among other grounds, conviction of a particularly serious crime.

An alien is considered to have been convicted of a particularly serious crime if the alien has been sentenced to an aggregate term of imprisonment of five or more years for an aggravated felony or felonies, not taking into account any suspension of imposition or execution of the sentence. An aggravated felony for which the alien has been sentenced to an aggregate term of imprisonment of less than five years may still constitute a particularly serious crime, depending on the crime.

Article 3 of the CAT, as implemented by regulations, creates an additional type of withholding of removal. It prohibits removal of any alien, regardless of any criminal background, to a country where the alien is more likely than not to be tortured. Article 3 is broader than [section 241\(b\)\(3\)](#) in that it contains no criminal bars to protection and does not require that the torture be on account of any specific reason. It is narrower in that torture is defined narrowly and does not include all types of harm that might constitute persecution.

An alien in administrative removal proceedings may request withholding of removal in his or her response to the Notice of Intent to Issue a Final Administrative Removal Order (NOI). A request for withholding of removal is the mechanism to seek protection from removal to a particular country under either [section 241\(b\)\(3\)](#) of the INA, based on a fear of persecution, or under Article 3 of the CAT, based on a fear of torture.

If the alien requests withholding of removal in his or her response to the NOI, the alien will, upon issuance of a Final Administrative Removal Order, be referred to an asylum officer. The asylum officer will conduct a screening process to determine whether the alien has a "reasonable fear" of persecution or torture under [8 CFR 208.31](#). If the asylum officer finds that the alien meets this standard, the case is referred to an immigration judge (IJ) for a withholding determination. If the asylum officer determines that the alien does not meet this standard, the alien may request IJ review of the screening determination only.

If the IJ agrees with the asylum officer's negative reasonable fear finding or if the alien does not request review, the alien may be removed from the United States. If the IJ determines that the alien has a reasonable fear of persecution or torture, the IJ will then make a determination whether the alien is likely to be persecuted or tortured and is, therefore, entitled to withholding of removal to the country in question under either [section 241\(b\)\(3\)](#) of the INA or under Article 3 of the CAT.

The regulations implementing Article 3 of the CAT also create a separate form of protection, called deferral of removal, for aliens who would be tortured but who are

subject to the bars to withholding. The determination about which form of protection will be granted under the CAT will be made by the IJ, and will not affect the procedures to be followed by INS officers in the administrative removal process. An IJ would grant deferral of removal only when an alien who has requested withholding has been found likely to be tortured but is subject to the bars to withholding. This manual, therefore, will refer generally to the process for withholding of removal under the CAT.

The administrative removal process includes the following procedural protections to the alien provided for in [section 238\(b\)](#) of the INA:

- (1) Reasonable notice of both the removal charge and the opportunity to inspect the evidence and rebut the charge.
- (2) Reasonable opportunity to inspect the evidence and rebut the charge.
- (3) The privilege of being represented by counsel at no expense to the Government.
- (4) A determination for the record that the individual upon whom the NOI is served is, in fact, the alien named in the NOI.
- (5) A record maintained in the event of judicial review.
- (6) The decision to issue a Final Administrative Removal Order not by the person who issues the NOI.

In addition to incorporating these statutorily provided procedural safeguards, the governing regulations ([8 CFR 238.1](#)) provide the following protections to the alien:

- (1) The charge of deportability must be supported by clear, convincing, and unequivocal evidence.
- (2) The alien must be furnished a list of available free legal services.
- (3) The Immigration and Naturalization Service (INS) must provide either a written translation of the charging document (NOI) or explain the contents of the charging document in the alien's native language or in a language the alien understands.
- (4) The NOI must explain to the alien that he or she may request withholding of removal to a particular country if he or she fears persecution or torture in that country.

### C. Highlights Of The Process

The following are highlights of the administrative removal process which incorporates the procedural protections given the alien:

(1) The officer encountering the alien determines that the alien's case meets the criteria for administrative removal. Under these criteria, when the process begins, the individual must be an alien who is not a lawful permanent resident. An alien with conditional permanent residence as the spouse, son, or daughter of a U.S. citizen or lawful permanent resident is not a lawful permanent resident for this purpose. The individual must also have a final conviction for an aggravated felony. An alien who has been convicted of an aggravated felony and who has entered the United States without inspection may be removed through administrative removal proceedings. However, an alien who entered the United States under the Visa Waiver Pilot Program (VWPP) or who has been paroled into the United States may not be put into administrative removal proceedings.

(2) The Issuing Service Officer (ISO) prepares or requests preparation of a charging document called a Notice of Intent to Issue a Final Administrative Removal Order (NOI) on [Form I-851](#). The ISO may be any Immigration and Naturalization Service (INS) officer listed in [8 CFR 239.1\(a\)](#) as authorized to issue a Notice to Appear to start removal proceedings before an immigration judge (IJ).

(3) A determination is made for the record that the individual upon whom the notice is served is the alien named in the notice. The NOI has a statement to that effect to be signed upon service of the NOI if service is in person. However, neither service in person nor verification of the individual's identity at the time of service are required. Identity is established when the encountering officer questions the alien and conducts related record and/or document checks.

(4) The INS gives the alien reasonable notice by serving the NOI. The NOI explains the alien's opportunity to inspect the Government's evidence and rebut the deportability charge by submitting a written response within ten days, with an extension allowed under certain circumstances. The NOI further explains that, in the response to the NOI, the alien may request withholding of removal if he or she fears persecution or torture in a specific country or countries. The NOI also explains the 14-day period for seeking judicial review if the INS issues a Final Administrative Removal Order unless the alien waives this 14-day period.

(5) The alien has an opportunity to be represented at no expense to the Government. The NOI explains this opportunity and is accompanied by a list of available free legal services.

(6) The alien has a reasonable opportunity to inspect the Government's evidence and rebut the allegations and charge. The alien may submit a written response to the NOI within ten calendar days. The Deciding Service Officer (DSO) may, but is not required to, grant more time to submit a response for good cause shown in a written request the INS receives within the original ten-day period. If the written response contains a request to review the evidence, the INS will serve the alien with a copy of that evidence and give the alien an extra ten days to submit a final response. Similarly, if the DSO considers additional evidence from a source other than the alien, the INS will serve the alien with a copy of that evidence and give the alien an extra ten days to submit a final response. If

service of the NOI or evidence is by mail, the alien has 13 calendar days to submit his or her response.

(7) The alien may, in writing, accept immediate issuance of a Final Administrative Removal Order. The alien may also waive the 14-day period for executing the order. The NOI includes statements the alien may sign if the alien chooses to do so.

(8) The DSO makes a decision. The DSO (not the same person who issues the NOI) decides the case. If the DSO finds deportability established by clear, convincing, and unequivocal evidence in the record of proceeding (ROP), the DSO enters a Final Administrative Removal Order. If the DSO finds the alien not amenable to removal under this process, the DSO must terminate the process. If the DSO finds the alien subject to removal in proceedings before an IJ, the DSO causes a Notice to Appear to be served on the alien to begin these proceedings.

(9) Removal must, except where statutory bars apply, be withheld to a country where an alien is more likely than not to be persecuted or tortured. An alien must be granted withholding of removal to a country where he or she is more likely than not to be persecuted as long as no statutory bars to withholding exist. Removal to a country where an alien is more likely than not to be tortured is also prohibited. There are no exceptions to the prohibition on removing an alien to a country where it is more likely than not that the alien would be tortured.

(10) An alien subject to this administrative removal process is by law ineligible for any relief from removal. This includes asylum, voluntary departure, or cancellation of removal. Withholding of removal based on a finding that an alien is more likely than not to be persecuted or tortured is not a form of relief because, as a legal matter, it does not relieve an alien from removal from the United States. It simply restricts the place to which the alien may be removed.

(11) The INS creates and maintains a permanent ROP. The INS must compile and maintain, throughout the entire process, a thorough ROP for judicial review.

(12) The INS may not execute a Final Administrative Removal Order during a 14-day period unless the alien waives this period. The statute prohibits execution of a Final Administrative Removal Order for 14 days after it is issued to give the alien an opportunity to apply for judicial review and requires that a record be maintained for that purpose.

(13) The INS determines custody status as it does in any case involving an alien convicted of an aggravated felony. The alien is subject to the same detention requirements as any other alien convicted of an aggravated felony. The INS custody decision is not administratively appealable, but the alien may seek review of such a decision in habeas corpus proceedings.

### III. ENFORCEMENT PROCEDURE

## A. Initiation Of The Procedure

First, the officer encountering the alien determines that the alien's case meets the criteria for administrative removal by questioning the alien. Under these criteria, when the process begins, the individual must be an alien who is not a lawful permanent resident. An alien who is a conditional permanent resident under [section 216](#) of the Immigration and Nationality Act (INA) as the spouse, son, or daughter of a U.S. citizen or lawful permanent resident is not a lawful permanent resident for this purpose. Also, an alien who has entered the United States without inspection may be removed through administrative removal proceedings. However, an alien who entered the United States under the Visa Waiver Pilot Program (VWPP) or who has been paroled into the United States may not be put into administrative removal proceedings. Second, the individual must have a final conviction for an aggravated felony. When processing the alien for this procedure, each of these elements, as well as the alien's identity, must be established.

(1) Establishing alienage. Establishing alienage in an administrative removal proceeding is no different from establishing alienage in other immigration-related matters. An alien is any person who is not a citizen or national of the United States. In determining if a person is an alien, the officer must consider place of birth, the nationality of the person's parents at birth, and/or subsequent naturalization by the person or his or her parents. Those items which would cause an individual to be an alien must be explored during questioning. If the facts indicate that the person is an alien, they must be documented in a Record of Deportable/Inadmissible Alien ([Form I-213](#)), sworn statement, and printouts of records checks. The time and date that the alien was questioned should be noted on the Form I-213, and this evidence must be placed in the record of proceeding (ROP).

(2) Verifying immigration status (not a lawful permanent resident). In order to establish the alien's immigration status at the time the process begins, the alien must be interviewed and all pertinent Immigration and Naturalization Service (INS) records systems should be checked. All evidence collected must be placed in the ROP. The Form I-213, sworn statement, printouts of records checks, and any documentation such as an Arrival-Departure Record (Form I-94) which indicates entry as a nonimmigrant should be used as evidence that the alien is not a lawful permanent resident. Evidence of conditional permanent resident status as the spouse, son, or daughter of a U.S. citizen or lawful permanent resident is available in both INS automated record systems and hard copy A- files.

Conditional permanent residence based on a relationship to a U.S. citizen or lawful permanent resident under [section 216](#) of the INA should not be confused with that for employment-creation entrepreneurs, spouses, and children under [section 216A](#) of the INA. Unlike section 216, which is based on a family relationship, section 216A is based on investment in a commercial enterprise. Persons who are conditional permanent residents as employment-creation entrepreneurs under section 216A may not be placed in administrative removal proceedings.

(3) Establishing conviction of an aggravated felony.

Conviction. The finality of a conviction is not affected by the pendency of post-conviction discretionary petitions, collateral attacks, or other remedies that do not constitute a direct appeal. The alien must establish that he or she has a direct appeal pending (or that the appeal time has not expired) in the criminal court proceedings in order to defend against the criminal ground of deportability alleged in the charging document.

The term conviction is defined in [section 101\(a\)\(48\)\(A\)](#) of the INA as, but is not limited to, a formal judgement of guilt by a court. That section of law gives the following test for establishing a conviction for immigration purposes if adjudication of guilt has been withheld: (A) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt; and (B) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. See [Section VIIB](#) of this manual for more information about section 101(a)(48)(A).

Aggravated felony. Legislation passed in 1988 defined the term aggravated felony at [section 101\(a\)\(43\)](#) of the INA. The definition was expanded in 1990, 1994, and 1996. A foreign conviction for which a term of imprisonment was completed within the previous 15 years is recognized as an aggravated felony.

Aggravated felonies are serious criminal offenses including, but not limited to, crimes such as murder, rape, sexual abuse of minors, child pornography, certain crimes of violence, and illicit trafficking in controlled substances, firearms, and destructive devices.

Immigration law was changed September 30, 1996 to provide that the term aggravated felony applies regardless of whether the conviction was before, on, or after that date. Before this change, determining whether a crime was an aggravated felony was very difficult because there were different effective dates for the various crimes. The enacting legislation provided that the term now applies regardless of when the conviction was entered to actions taken on or after September 30, 1996 and to violations on or after that date of [section 276](#) of the INA relating to criminal reentry after removal.

[Matter of Lettman, Interim Decision 3370](#) (BIA 1998), held that an alien convicted of an aggravated felony is subject to removal regardless of the date of the conviction provided the alien is put in proceedings on or after March 1, 1991 and the crime falls within the aggravated felony definition. In *Lettman v. INS*, 168 F.3d 463 (11<sup>th</sup> Cir.1999), however, the Eleventh Circuit reversed this decision. It held that an alien convicted of murder prior to the effective date of section 7344 of the Anti-Drug Abuse Act (ADAA) of 1988, Public Law 100-690, allowing for deportation of aliens convicted of aggravated felonies, could not be deported under that section. Since the Eleventh Circuit decision is currently the law within that judicial circuit, INS employees working on administrative



removal cases in that jurisdiction (Alabama, Georgia, and Florida) should consult District Counsel for guidance.

Conviction record. The record of conviction must be placed in the ROP. The conviction may be proven by any of the documents or records in 8 CFR 3.41 which describes evidence accepted in proceedings before an immigration judge (IJ). [See 8 CFR 3.41 and [8 CFR 287.6\(a\)](#), which is cited in the former regulation. See also [sections 240\(c\)\(3\)\(B\)](#) and [\(C\)](#) of the INA describing types of documentary evidence constituting proof of conviction in immigration proceedings. These sections of law provide a statutory basis for 8 CFR 3.41.]

(4) Verifying identity. When questioning the alien and checking records and documents to determine whether the case meets the criteria for administrative removal, special care must be taken to verify his or her identity. The process for verifying identity in an administrative removal proceeding is, in actuality, no different from that in any other immigration-related matter. The encountering officer is responsible for making absolutely certain that all information is completely consistent and there is no question whatsoever about the identity of the person on whom the Notice of Intent to Issue a Final Administrative Removal Order (NOI) will be served.

The law specifically requires a determination for the record that the individual upon whom the NOI is served is, in fact, the alien named in the NOI. When the NOI is served in person, the INS employee or other official serving the NOI verifies the identity of the person on whom it is served and signs a statement to that effect in the Certificate of Service on the NOI. In a case where service will be by mail, the investigating officer/agent should prepare a brief written determination regarding verification of the alien's identity for inclusion in the ROP.

(5) Determining applicability of withholding of removal. Once a case meets the criteria for administrative removal proceedings under [section 238\(b\)](#) of the INA, no relief from removal exists. While no relief from removal is available in these proceedings, cases may arise in which removal to a particular country must be withheld under [section 241\(b\)\(3\)](#) of the INA or Article 3 of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT).

[Section 241\(b\)\(3\)](#) of the INA provides for withholding of removal to a country where an alien's life or freedom would be threatened because of the alien's race, religion, nationality, membership in a particular social group, or political opinion. This does not apply "if the Attorney General decides that...the alien, having been convicted by a final judgement of a particularly serious crime, is a danger to the community." An alien sentenced to an aggregate term of imprisonment of at least five years for his or her aggravated felony conviction(s) is considered to have committed a particularly serious crime and is statutorily ineligible for withholding of removal. An alien sentenced to less than five years in the aggregate for his or her aggravated felony or felonies, however, may be entitled to withholding of removal under [section 241\(b\)\(3\)](#).

In addition, Article 3 of the CAT prohibits an alien's removal to a country where he or she is more likely than not to be tortured. There are no exceptions to this prohibition. Therefore, an alien with aggravated felony conviction(s) may be entitled to protection under Article 3, even if he or she has been sentenced to five or more years' imprisonment.

The NOI informs the alien that he or she may request withholding or deferral of removal if he or she fears persecution on account of a protected ground listed in [section 241\(b\)\(3\)](#) of the INA in a specific country or countries or if he or she fears torture in a specific country or countries. The alien may request withholding on either of these grounds:

By checking the appropriate boxes on the back of the NOI.

By so stating in a written response to the NOI.

If the alien requests, or indicates an intention to request, withholding of removal under [section 241\(b\)\(3\)](#) of the INA or Article 3 of the CAT, the officer encountering the alien must prepare a memorandum so stating for inclusion in the ROP. Similarly, if the alien expresses a fear of returning to a particular country or countries, the encountering officer must document that in a memorandum for the ROP. Since withholding/deferral of removal is the only remedy available in such a case, this will help ensure that the alien is not ordered removed without an opportunity to express his or her concerns. Such a memorandum will, for example, highlight the need to serve the NOI in person to make absolutely certain the alien knows that he or she may request withholding of removal.

For an alien who expresses a fear of return to a particular country or countries to be considered for withholding, he or she must affirmatively request withholding by checking the appropriate boxes on the back of the NOI or by so stating in a written response to the NOI. If INS employees working on administrative removal are concerned about whether aliens who expressed fear of return understand this requirement, the employees may contact the Asylum Pre-Screening Officer (APSO) Supervisory Asylum Officer (SAO) at the local asylum office for assistance. The APSO SAO will arrange for asylum officers to help explain the NOI and information about the reasonable fear screening process, either by telephone or in person. The APSO SAO may also assist in finding appropriate interpreters, if necessary.

The officer encountering the alien should continue his or her action to initiate administrative removal proceedings after preparing the memorandum about withholding of removal or fear of return. However, if and when a Final Administrative Removal Order is issued, the alien will be referred for a screening determination under [8 CFR 208.31](#) by an asylum officer if the alien has affirmatively requested withholding in one of the ways described above.

(6) Determining applicability of a waiver under [section 212\(h\)](#) of the INA. Pursuant to section 238(b)(5) of the INA, an alien in administrative removal proceedings under

section 238(b) of the INA is ineligible to apply for any discretionary relief. However, in [In re Michel, Interim Decision 3335](#) (BIA 1998), the Board of Immigration Appeals (BIA) held that an alien not previously admitted to the United States as a lawful permanent resident is statutorily eligible to seek a [section 212\(h\)](#) waiver despite an aggravated felony conviction.

## Appendix 14-2 VWPP Sample Packet

UNITED STATES OF AMERICA

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

\_\_\_\_\_

ORDER OF DEPORTATION

Section 217

TO: LAST NAME, First Name (A00-000-000)

Having determined that:

- 1) You are neither a citizen nor a national of the United States, and;
- 2) You were admitted to the United States on \_\_\_\_\_ at \_\_\_\_\_ under Section 217 of the Immigration and Nationality Act, and authorized to remain until \_\_\_\_\_.
- 3) You have violated the conditions of that admission in that:

After admission as a nonimmigrant under Section 217 of said Act, you have remained in the United States longer than authorized [Section 237(a)(1)(B)];

- 4) You have waived your rights to contest any action for deportation, except to apply for asylum, having been admitted under Section 217 of the Immigration and Nationality Act,

By virtue of the authority vested in the Attorney General of the United States, and in me as his delegate, by the laws of the United States,

I HEREBY ORDER that you be deported from the United States of America.

\_\_\_\_\_

(Signature) (Date)

---

(Name and Title) (Place)

UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

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WARRANT

Section 217

File No. A00 000 000

TO ANY OFFICER OR EMPLOYEE OF THE UNITED STATES IMMIGRATION  
AND NATURALIZATION SERVICE:

Pursuant to Section 217 of the Immigration and Nationality Act, an authorized officer of  
the United States Immigration and Naturalization service has ordered that:

LAST NAME, First Name

who entered the United states at \_\_\_\_\_ on the \_\_\_\_th day of \_\_\_\_\_, \_\_\_\_\_  
be deported from the United States of America. Therefore, I, the undersigned officer of  
the United States, by virtue of the power and authority vested in the Attorney General  
under the laws of the United States and by his direction, command you to take into  
custody and deport the said alien pursuant to law, at the expense of (Carrier)

Signature:

Title: District Director

Date:

UNITED STATES DEPARTMENT OF JUSTICE

IMMIGRATION AND NATURALIZATION SERVICE

NOTICE OF INTENT TO DEPORT FOR VIOLATING THE TERMS OF YOUR  
ADMISSION UNDER SECTION 217 OF THE IMMIGRATION AND NATIONALITY  
ACT

TO: LAST NAME, First Name

File No. A 00 000 000

The Immigration and Naturalization Service has determined that you entered the United States pursuant to Section 217 of the Immigration and Nationality Act. Accordingly, you executed a Form I-791, Visa Waiver Pilot Program Information Form, that explained to you the conditions of admission under the Visa Waiver Pilot Program. When you signed Form I-791, you also waived your right to contest deportability before an immigration judge and the Board of Immigration Appeals, and to any judicial review of any and all of the above decisions.

The Immigration and Naturalization Service has determined that you have violated the terms of your admission under Section 217 of the Immigration and Nationality Act on the grounds that:

You have remained in the United States for a time longer than permitted.

Accordingly, the United States Immigration and Naturalization Service has entered an order that you be deported and removed from the United States.

Signature:

Title: District Director

Place: Location

WARRANT FOR DEPORTATION OF

LAST NAME, First Name (A00 000 000)

(Name of Deportee)

Deported at Port of \_\_\_\_\_ on \_\_\_\_\_

(Port of departure from the U.S.)

(Date of departure)

Via \_\_\_\_\_

(Manner of departure; identify airline or ship; if other, state: afoot, car, etc.)

Departure witnessed by:

(Signature and title of officer)

If actual departure not witnessed, fully identify source or means of departure verification:

If self-deportation pursuant to 8 CFR 243.5, check here

Officer Executing Warrant:

(Signature and Title)

Date Form Completed:

Comments:

(Signature of Person Fingerprinted)

Right Thumb Print

(Signature of Official Taking Print)

(Title of Official Taking Print)

GPO 863 444

U.S. Department of Justice      Notice of Country to which Deportation has been

Immigration and Naturalization Service directed and Penalty for reentry without  
Permission

PLEASE REFER TO THIS FILE NO. A00 000 000

DATE: 00/00/0000

Dear Mr. LAST NAME, First Name:

This is a warning. please read carefully.

It has been ordered that you be deported to (country) .

You will be informed, if appropriate, when departure arrangements are complete. If needed, we will assist you as much as possible in arranging your personal affairs for your departure. However, you may be deported at any time and without further notice.

Should you wish to return to the United States you must write this office or the United States Consular Office nearest your residence abroad as to how to obtain permission to return after deportation. Permission must be obtained from the Attorney General if you are seeking admission within five (5) years of deportation or removal, or within twenty (20) years if your deportation was subsequent to a conviction for an aggravated felony.

By law, (Title 8 of the United States Code, Section 1326), any alien who has been arrested and deported or excluded and deported who enters , attempts to enter, or is at any time found in the United States shall be subject to the penalties listed below unless, prior to his reembarkation at a place outside of the United States or his application for admission from a foreign contiguous territory, the Attorney General has expressly consented to such aliens reapplying for admission:

(a) Any such alien, other than an alien convicted of a felony, shall be fined not more than \$250,000.00 or imprisoned for not more than two (2) years. [8 U.S.C. 1326(a)]

(b) Any such alien whose deportation was subsequent to a conviction for a felony (Other than an aggravated felony) shall be fined not more than \$250,000.00, imprisoned for not more than five (5) years, or both. [8 U.S.C. 1326(b)(1)].

(c) Any such alien whose deportation was subsequent to a conviction for an aggravated felony shall be fined not more than \$250,000.00, imprisoned for not more than fifteen (15) years, or both. [8 U.S.C.1326(b)(2)].

Very truly yours,

(Name)

(Title)

Form I-294 (Rev. 06/12/92)N (SUBS)

Departamento de Justicia de los Estados Unidos

Servicio de Inmigracion y Naturalizacion

SIRVASE REFERIRSE A ESTE NUMERO DE REGISTRO

A00 000 000

FECHA: 00 / 00 / 0000

Estimado Sr. (NAME):

Esta carta es una advertencia. Le pedimos que la lea cuidadosamente.

Se ha ordenado su deportación a (country) .

Se le informara, si es apropiado, cuando se hayan concluido los tramites para su salida. En caso necesario, le ayudaremos lo mas posible para arreglar sus asuntos personales antes de su salida. Sin embargo, puede ser deportado en cualquier momento y sin previo aviso.

En caso de que desee regresar a los Estados Unidos, debe dirigirse por escrito a esta oficina o al Consulado de los Estados Unidos mas cercano a su domicilio en el extranjero y preguntar como obtener permiso para regresar despues de su deportacion. Debe obtener el permiso del Secretario de Justicia si trata de entrar en el palzo de cinco (5) anos a partir de su deportacion o retiro, o en el plazo de veinte (20) anos si su deportacion se llevo a cabo despues de una condena por delito grave con agravantes.

Segun la ley (Seccion 1326 del Titulo 8, Codigo de los Estados Unidos), todo extranjero que haya sido arrestado y deportado o excluido y deportado y que entre, trate de entrar o se encuentre en cualquier momento en los Estados Unidos estara sujeto a las penas mencionadas a continuacion a menos que, antes de reembarcar de un lugar fuera del territorio de los Estados Unidos o antes de la presentacion de su solicitud de entrada desde un territorio extranjero contiguo, el Secretario de Justicia acceda expresamente a que dicho extranjero vuelva a solicitar la entrada en el pais:

(a) Todo extranjero, salvo un extranjero condenado por un delito grave sera condenado a multa de no mas de \$250,000 o a encarcelamiento que no exceda de dos anos. [Seccion 1326 (a) del titulo 8, Codigo de los Estados Unidos].

(b) Todo extranjero deportado despues de una condena por delito grave (salvo un delito grave con agravantes) sera condenado a multa de no mas de \$250,000, o encarcelamiento que no exceda de cinco anos o ambas penas. [Seccion 1326(b)(1) del Titulo 8, Codigo de los Estados Unidos].

(c) Todo extranjero deportado despues de una condena por delito grave con agravantes sera condenado a multa de no mas de \$250,000, o encarcelamiento que no exceda de quince anos, o ambas penas. [Seccion 1326(b)(2) de Titulo 8, Codigo de los Estados Unidos].

Atentamente,



Director de distrito

Form I-294 (Rev. 06/12/92)N(Subs.)

## **Appendix 14-3 Sample Notification and Findings for Deserters from a Greek and Spanish Ship of War**

Sample Notification and Findings for Deserters from Greek and Spanish Ship of War

When preparing notifications of charges and findings, the following may be used as guides only and shall be modified, as needed, to accord with the case at hand.

UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

20 West Broadway

New York, New York, 10007

NOTIFICATION OF CHARGES

To: Juan Gomez Date: February 23, 1966

An official representative of the government of Spain has presented evidence and charged that while you were a member of the Spanish ship of war "Alcala Galiano," you deserted such vessel on or about November 25, 1965, at Philadelphia, Pennsylvania. He has requested that you be taken into custody and surrendered to him.

Therefore, under the provisions of Article XXIV of the 1903 Treaty of Friendship and General Relations between the United States and Spain, as implemented by Executive Order No. 11267 of January 19, 1966, and section 252.5 of Title 8 of the Code of Federal Regulations, you are detained pending an examination of the charges. You have the right to be represented during the examination by counsel of your choice, at your expense.

(United States Immigration Officer)

CERTIFICATE OF SERVICE

A copy of this notice was handed to the above named individual, and read and explained to him by the undersigned on February 23, 1966.

(United States Immigration Officer)

UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

New York, New York

NOTICE OF FINDINGS

Re: Juan Gomez File No.

Whereas, after due examination and upon the basis thereof, I find that: (1) Spanish Consul-General Ramirez has requested this Service in writing to arrest and return Juan Gomez, a citizen of Spain and a member of the crew of the Spanish ship of war "Alcala Galiano," who deserted said vessel on or about November 25, 1965, at Philadelphia, Pennsylvania; (2) as evidence thereof, a duly certified copy of the crew list of the "Alcala Galiano" has been presented and reflects that Juan Gomez was a member of said ship's company at the time of desertion; (3) you have acknowledged that you did desert said vessel on or about the date and at the place stated; (4) you are the Juan Gomez referred to above and the charge alleged against you are true; (5) you are not a citizen of the United States; and (6) you have not been previously arrested for the same cause.

Therefore, by virtue of the authority vested in me under the provisions of Article XXIV of the 1903 Treaty of Friendship and General Relations between the United States and Spain, as implemented by Executive Order No. 11267 of January 19, 1966, and section 252.5 of Title 8 of the Code of Federal Regulations, I hereby order that you be surrendered to the official representatives of the Spanish government when they are prepared to affect your departure from the United States. I further order that, if requested by the Spanish authorities, you be detained for a period of not more than three months from the day of your arrest to afford opportunity for the Spanish authorities to complete travel arrangements.

---

Date: March 10, 1966

CERTIFICATE OF SERVICE

A copy of this notice was delivered to the above -named individual, and read and explained to him by the undersigned on March 10, 1966.

**Appendix 14-4 S-Visa Sample Packet**

UNITED STATES OF AMERICA

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

\_\_\_\_\_

ORDER OF DEPORTATION

Section 214

TO: LAST NAME, First Name (A00-000-000)

Having determined that:

- 1) You are neither a citizen nor a national of the United States, and;
- 2) You were admitted to the United States on \_\_\_\_\_ at \_\_\_\_\_ under Section 214(k)(1) of the Immigration and Nationality Act, and authorized to remain until \_\_\_\_\_.

- 3) You have violated the conditions of that admission in that after admission as a nonimmigrant under Section 214 of said Act, you :

\_\_\_(A) failed to report not less often than quarterly to the Attorney General such information concerning the your whereabouts and activities as the Attorney General has required; or

\_\_\_(B) have been convicted of a criminal offense punishable by a term of imprisonment of 1 year or more after date of such admission; or

\_\_\_(C) failed to abide by any other condition, limitation, or restriction imposed by the Attorney General.

- 4) You have waived your rights (Form I-854, Part B.1.) to contest any action for deportation, except to apply for withholding of deportation, having been admitted under Section 214 of the Immigration and Nationality Act,

By virtue of the authority vested in the Attorney General of the United States, and in me as his delegate, by the laws of the United States,

I HEREBY ORDER that you be deported from the United States of America.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

---

(Name and Title) (Place)

UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

---

WARRANT

Section 214

File No. A00 000 000

TO ANY OFFICER OR EMPLOYEE OF THE UNITED STATES IMMIGRATION  
AND NATURALIZATION SERVICE:

Pursuant to Section 214 of the Immigration and Nationality Act, an authorized officer of  
the United States Immigration and Naturalization service has ordered that:

LAST NAME, First Name

who entered the United states at (Port of Arrival) on the xxth day of Month, Year be  
deported from the United States of America. Therefore, I, the undersigned officer of the  
United States, by virtue of the power and authority vested in the Attorney General under  
the laws of the United States and by his direction, command you to take into custody and  
deport the said alien pursuant to law, at the expense of (Carrier)

Signature:

Title: District Director

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

UNITED STATES DEPARTMENT OF JUSTICE

IMMIGRATION AND NATURALIZATION SERVICE

NOTICE OF INTENT TO DEPORT FOR VIOLATING THE TERMS OF YOUR  
ADMISSION UNDER SECTION 214 OF THE IMMIGRATION AND NATIONALITY  
ACT

TO: LAST NAME, First Name

File No. A 00 000 000

The Immigration and Naturalization Service has determined that you entered the United States pursuant to Section 214 of the Immigration and Nationality Act. Accordingly, you executed a Form I-854, Inter-Agency Alien Witness and Informant Record , that explained to you the conditions of your admission. When you signed Form I-854 Part B.1., you waived your right to contest deportability before an immigration judge and the Board of Immigration Appeals, and to any judicial review of any and all of the above decisions.

The Immigration and Naturalization Service has determined that you have violated the terms of your admission under Section 214 of the Immigration and Nationality Act on the grounds that:

\_\_ (A) You failed to report not less often than quarterly to the Attorney General such information concerning the your whereabouts and activities as the Attorney General has required; and/or

\_\_ (B) You have been convicted of a criminal offense punishable by a term of imprisonment of 1 year or more after date of such admission, to wit: You were, on \_\_\_\_\_ date at \_\_\_\_\_ location, convicted in the court of \_\_\_\_\_ (jurisdiction) for the offense of \_\_\_\_\_; and/or

\_\_ (C) You failed to abide by any other condition, limitation, or restriction imposed by the Attorney General, to wit:\_\_\_\_\_.

Accordingly, the United States Immigration and Naturalization Service has entered an order that you be deported and removed from the United States.

Signature:

Title: District Director

Place: Location \_\_\_\_\_

WARRANT FOR DEPORTATION OF

LAST NAME, First Name (A00 000 000)

(Name of Deportee)

Deported at Port of \_\_\_\_\_ on \_\_\_\_\_

(Port of departure from the U.S.)

(Date of departure)

Via

(Manner of departure; identify airline or ship; if other, state: afoot, car, etc.)

Departure witnessed by:

(Signature and title of officer)

If actual departure not witnessed, fully identify source or means of departure verification:

If self-deportation pursuant to 8 CFR 243.5, check here

Officer Executing Warrant:

(Signature and Title)

Date Form Completed:

Comments:

(Signature of Person Fingerprinted)

Right Thumb Print

(Signature of Official Taking Print)

(Title of Official Taking Print)

GPO 863 444

U.S. Department of Justice

Notice of Country to which Deportation has been

Immigration and Naturalization Service directed and Penalty for reentry without  
Permission

PLEASE REFER TO THIS FILE NO. A00 000 000

DATE: 00/00/0000

Dear Mr. LAST NAME, First Name:

This is a warning. please read carefully.

It has been ordered that you be deported to (country) .

You will be informed, if appropriate, when departure arrangements are complete. If needed, we will assist you as much as possible in arranging your personal affairs for your departure. However, you may be deported at any time and without further notice.

Should you wish to return to the United States you must write this office or the United States Consular Office nearest your residence abroad as to how to obtain permission to return after deportation. Permission must be obtained from the Attorney General if you are seeking admission within five (5) years of deportation or removal, or within twenty (20) years if your deportation was subsequent to a conviction for an aggravated felony.

By law, (Title 8 of the United States Code, Section 1326), any alien who has been arrested and deported or excluded and deported who enters , attempts to enter, or is at any time found in the United States shall be subject to the penalties listed below unless, prior to his reembarkation at a place outside of the United States or his application for admission from a foreign contiguous territory, the Attorney General has expressly consented to such aliens reapplying for admission:

(a) Any such alien, other than an alien convicted of a felony, shall be fined not more than \$250,000.00 or imprisoned for not more than two (2) years. [8 U.S.C. 1326(a)]

(b) Any such alien whose deportation was subsequent to a conviction for a felony (Other than an aggravated felony) shall be fined not more than \$250,000.00, imprisoned for not more than five (5) years, or both. [8 U.S.C. 1326(b)(1)].

(c) Any such alien whose deportation was subsequent to a conviction for an aggravated felony shall be fined not more than \$250,000.00, imprisoned for not more than fifteen (15) years, or both. [8 U.S.C. 1326(b)(2)].

Very truly yours,

(Name)

(Title)

Form I-294 (Rev. 06/12/92)N (SUBS)

Departamento de Justicia de los Estados Unidos

Servicio de Inmigracion y Naturalizacion

SIRVASE REFERIRSE A ESTE NUMERO DE REGISTRO

A00 000 000

FECHA: 00 / 00 / 0000

Estimado Sr. (NAME):

Esta carta es una advertencia. Le pedimos que la lea cuidadosamente.

Se ha ordenado su deportacion a (country) .

Se le informara, si es apropiado, cuando se hayan concluido los tramites para su salida. En caso necesario, le ayudaremos lo mas posible para arreglar sus asuntos personales antes de su salida. Sin embargo, puede ser deportado en cualquier momento y sin previo aviso.

En caso de que desee regresar a los Estados Unidos, debe dirigirse por escrito a esta oficina o al Consulado de los Estados Unidos mas cercano a su domicilio en el extranjero y preguntar como obtener permiso para regresar despues de su deportacion. Debe obtener el permiso del Secretario de Justicia si trata de entrar en el palzo de cinco (5) anos a partir de su deportacion o retiro, o en el plazo de veinte (20) anos si su deportacion se llevo a cabo despues de una condena por delito grave con agravantes.

Segun la ley (Seccion 1326 del Titulo 8,Codigo de los Ustados Unidos), todo extranjero que haya sido arrestado y deportado o excluido y deportado y que entre, trate de entrar o se encuentre en cualquier momento en los Estados Unidos estara sujeto a las penas mencionadas a continuacion a menos que, antes de reembarcar de un lugar fuera del territorio de los Estados Unidos o antes de la presentacion de su solicitud de entrada desde un territorio extranjero contiguo, el Secretorio de Justicia acceda expresamente a que dicho extranjero vuelva a solicitar la entrada en el pais:

(a) Todo extranjero, salvo un extranjero condenado por un delito grave sera condenado a multa de no mas de \$250,000 o a encarcelamiento que no exceda de dos anos. [Seccion 1326 (a) del titulo 8, Codigo de los Estados Unidos].

(b) Todo extranjero deportado despues de una condena por delito grave (salvo un delito grave con agravantes) sera condenado a multa de no mas de \$250,000, o



encarcelamiento que no exceda de cinco años o ambas penas. [Sección 1326(b)(1) del Título 8, Código de los Estados Unidos].

(c) Todo extranjero deportado después de una condena por delito grave con agravantes será condenado a multa de no más de \$250,000, o encarcelamiento que no exceda de quince años, o ambas penas. [Sección 1326(b)(2) de Título 8, Código de los Estados Unidos].

Atentamente,

Director de distrito

Form I-294 (Rev. 06/12/92)N(Subs.)

## **Appendix 14-5 Guidance Governing the S Nonimmigrant Visa, Memorandum, dated December 23, 2002**

[Guidance Governing the S Nonimmigrant Visa, Memorandum, dated December 23, 2002](#)

## **Appendix 15-1 Detention and Release of Aliens with Final Orders of Removal, Memorandum, dated March 16, 2000**

[Detention and Release of Aliens with Final Orders of Removal, Memorandum, dated March 16, 2000](#)

## **Appendix 16-1 Travel Document Handbook**

DETENTION AND DEPORTATION

TRAVEL DOCUMENT HANDBOOK

Preface

The Information contained in this handbook was designed to assist the field officer in understanding the procedures involved in processing a travel document request with a foreign embassy or consular office. If the Operations Instructions, Regional Office Instructions, or Headquarters instructions differ from this handbook, then those instruction must take precedence.

11/04/94

## DDP

Detention and Deportation

Travel Document Handbook

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[2. Country Requirements](#)

[3. Capital Cities of the World](#)

1. Introduction

This handbook is published as a guide to assist you in your work. Through the course of time requirements may change and means in which to accomplish your objective in obtaining a travel document may vary. When this occurs I-LINK will be prepared and disseminated to the field.

Headquarters Deportation conducts meetings with Foreign Embassy Officials and State Department personnel regularly, and will assist field officers, when a case becomes extremely difficult to resolve, or reaches an impasse. It is important to keep in mind that every attempt should be made to improve liaison locally with foreign Consulates in your area.

Variations from the requirements contained herein should be promptly reported through channels to the Assistant Commissioner, Detention and Deportation for consideration and possible changes to the handbook.

The country requirements listed for the issuance of a travel document, were provided by the foreign Embassies in Washington, DC. These requirements could vary depending on the local consular office; however, they are basically accurate.

Some passports (for nonimmigrant only) are valid for six months beyond the expiration date through agreements with the governments concerned. The list of countries who have made such agreements are in the Foreign Affairs Manual (See Appendix).

All Service officers are reminded of the existing treaties under 8 CFR 236.1(e), requiring communication with appropriate consular or diplomatic officers. Where the processing time may differ from one consular office to another in issuing a travel document, it is best to make notification early, so personnel or telephonic interviews can be arranged to determine nationality.

All presentations should include: a fully completed I-217, Information for Travel Document or Passport; I-862, Notice to Appear or I-863, Notice of Referral to Immigration Judge; I-200, Warrant of Arrest; final orders of deportation, exclusion or removal issued by an immigration judge (work sheet only); I-871, Notice of Intent/Decision to Reinstate Prior Order; I-205 warrant of deportation; and I-294 or I-296 warning. The number of photographs varies depending on consular office; some require fingerprints.

In cases involving criminal aliens, the presentation should include a complete record of all convictions. Even if the passport is valid, notification must be made in advance of travel arrangements.

Cases involving asylum should be kept confidential. Copies of immigration judges' orders, Board of Immigration Appeals decisions, I-589's, etc., should not be sent to a foreign Embassy or Consul. Any material in the record or A-file pertaining to a Political asylum claim should not be supplied. Request for this information can be processed through a Freedom of Information Request, Form I-639.

A presentation should be made in cases involving mentally ill aliens if the passport is valid. This should include a medical and clinical summary from the place of hospitalization. Arrangements should be made through the consular office in the United States for possible hospitalization upon arrival at foreign port. Advance travel arrangements are required.

Some aliens travel on documents issued by the country of residence rather than the country of citizenship. It is important that such documents be kept valid as the country concerned will generally deny a travel document on the basis of loss of residency after the document has expired.

All of the embassies have expressed a similar concern regarding proof of citizenship. The burden of proof lies with the U.S. Government to prove the deportees nationality.

When submitting a presentation for a travel document every effort should be made to obtain some type of identification from the alien, his\her family, or from records . The Nonimmigrant Information System (NIIS) should be checked for entry information and passport number. Family members files should be reviewed for information on deportee. INTERPOL should be contacted in cases where it is believed subject is lying about his\her identity, so fingerprints, photograph and biographical information can be forwarded to areas of possible origin.

## 2. Country Requirements

A

### [AFGHANISTAN](#)

ALBANIA

ALGERIA

ANGOLA

ANTIGUA AND BARBUDA

ARGENTINA

ARMENIA

AUSTRIA

AUSTRALIA

AZERBAIJAN

**B**

BAHAMAS

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AFGHANISTAN

Valid passports may be used to deport non-criminal Afghan citizens without notification to the Embassy. Criminal cases require embassy notification.

Expired passports, or cases without a passport, must be presented to the embassy. The normal INS presentation package is acceptable. There are no applications that need to be filled out.

Non-Afghan citizens may not be deported to Afghanistan without specific permission from the embassy.

ALBANIA

(Rev. 2/25/2000)

Embassy Address: 2100 S Street, NW

Washington, DC 20008

Contact: Nasi Mitrojorgji

Position: First Secretary

Phone: (202) 223-4942

Fax #: (202) 628-7342

Web Site: N/A

E-Mail: N/A

Travel Document Request:

Can alien return on an expired passport? NO

Is travel document application required? NO

Is a fee required? YES \$30.00

Number of photos required: 2  
Interview by consular officer required? NO  
Itinerary required before document issued? NO  
Other documents required: I-217 YES

NTA YES  
Judges order YES  
Warrant of Removal YES  
Fingerprints NO  
Birth certificate/passport/ID YES

Notification:

Notification required on all aliens YES  
Notification on criminal aliens YES  
How many days advanced notice required? 5 days  
Special notifications required/additional information:

N/A

Visa Requirements:

Are visas required for escorting officers? NO  
Is a visa application required NO  
Is an official letter required? NO  
Is a fee required? NO  
Are transiting visas required? NO

Consular offices in the United States:

N/A

ALGERIA

(Rev. 8/16/2000)

Embassy Address: 2137 Wyoming Avenue, NW

Washington, DC 20008

Contact: Karim Velkessan

Position: Head of Consulate Section

Phone: (202) 265-2800

Fax #: (202) 667-2174

Web Site: [www.algeria-us.org](http://www.algeria-us.org)

E-Mail: embalgus@cais.com

Travel Document Request:

Can alien return on an expired passport? YES

Is travel document application required? NO

Is a fee required? NO

Number of photos required: 3

Interview by consular officer required? CASE-BY-CASE

Itinerary required before document issued? YES

Other documents required: I-217 YES

NTA YES

Judges order YES

Warrant of Removal YES

Fingerprints YES

Birth certificate/passport/ID YES

Notification:

Notification required on all aliens            YES  
Notification on criminal aliens            YES  
How many days advanced notice required?    5 days

Special notifications required/additional information:

Algerian citizenship law follows jus sanguinis. To be a citizen of Algeria it is required that a persons father and grandfather be citizens of Algeria. If the alien is born outside of Algeria, that persons father, grandfather and great-grandfather must be citizens of Algeria.

All requests for a travel document must be forwarded by the Embassy to the Ministry in Algeria for approval. Some form of Algerian identity document is required for a document to be issued. Algeria will not issue without any identification whatsoever. Algeria also will not issue passports to non-citizens as other Arabic countries will do.

The Algerian Consulate in New York does not issue travel documents or visas for the removal of aliens to Algeria. All requests must be sent to the Embassy. If an escort is required for an alien to be removed to Algeria, the escorting officers must each submit to the Embassy two completed applications accompanied by two passport-sized photos and an official letter from INS stating the purpose of their trip. There is no fee for the visa.

Visa Requirements:

Are visas required for escorting officers?    YES  
Is a visa application required?            YES  
Is an official letter required?            NO  
Is a fee required?                            NO  
Are transiting visas required?            YES

Consular offices in the United States:

326 East 48<sup>th</sup> Street

New York, NY 10017

(212) 750-1960



ANGOLA

Inquiries concerning travel documentation should be referred to the Embassy in Washington, DC:

Embassy of the Republic of Angola

1899 L Street, N.W.

Washington, DC 20036

ANTIGUA AND BARBUDA

Inquiries concerning travel documentation should be referred to the Embassy in Washington, DC:

Embassy of Antigua and Barbuda

3400 International Dr., N.W., Suite 4M

Washington, DC 20008

ARGENTINA

(Rev. 3/14/2000)

Embassy Address: 1600 New Hampshire Ave

Contact: Liliana A. Koppel

Position: Consular Officer

Phone: (202) 238-6463

Fax #: (202) 238-6471

Web Site: [www.embajadaargentina-usa.org](http://www.embajadaargentina-usa.org)

E-Mail: aeconswash@synet.net

Travel Document Request:

Can alien return on an expired passport? NO

Is travel document application required? YES

Is a fee required? NO  
Number of photos required: 4  
Interview by consular officer required? YES  
Itinerary required before document issued? YES  
Other documents required: I-217 YES  
NTA YES  
Judges order YES  
Warrant of Removal YES  
Fingerprints YES  
Birth certificate/passport/ID YES

Notification:

Notification required on all aliens YES  
Notification on criminal aliens YES  
How many days advanced notice required? 5 DAYS

Special notifications required/additional information:

Alien must be presented for interview before issuance. If unable to obtain proof of citizenship, alien must be presented twice, once for interview and a second time for issuance. Eight photos are required if alien does not have proof of citizenship.

Visa Requirements:

Are visas required for escorting officers? YES  
Is a visa application required YES  
Is an official letter required? YES  
Is a fee required? NO  
Are transiting visas required? YES

Consular offices in the United States:

Marquis One Tower, Suite 2101

245 Peachtree Center Avenue

Atlanta, Georgia 30303

(404)880-0805

205 North Michigan Avenue, Suite 4208/09

Chicago, Illinois 60601-5968

(312)819-2606

1990 Post Oak Boulevard, Suite 770

Houston, Texas 77056

(713)871-8935

5055 Wilshire Boulevard, Suite 210 & 208

Los Angeles, California 90036

(213)954-9155

800 Brickell Avenue, PH 1

Miami, Florida 33131

(305)373-7794

12 West 56th Street

New York, New York 10019

(212)603-0400

ARMENIA

(1994)

The Republic of Armenia requires the following documents to be submitted with a presentation:

- (1) Record of deportable alien I-213
- (2) Order to Show Cause I-221
- (3) Warrant of Deportation I-205
- (4) Information for travel document or passport I-217
- (5) Executive Office for Immigration Review

In addition to the above, the Embassy requires a completed Personal Information Questionnaire, and copies of any relevant civil status documents; birth certificate, marriage license, etc. If subject is in possession of a Soviet passport, whether expired or valid, submit photocopies of each page.

The Consular Officer at the embassy studies the submitted request, and in consultation with the appropriate government officials in Armenia issues a decision. In general, the following points are considered in the decision making process:

- Place of birth
- Duration of residence in Armenia
- Age and citizenship status at time of emigration from Armenia
- Status of Armenia citizenship since establishing permanent residence in the United States (specifically, whether appropriate steps were taken to maintain Armenian/ex-Soviet citizenship)
- Whether the individual has relatives or others in Armenia who can provide financial and economic support.
- Nature of crime (determination of level of potential danger the individual poses to Armenian society).

## AUSTRIA

(1994)

Austrian citizens being deported from the United States are admitted into Austria provided they are in possession of valid Austrian passport or a "Certificate of Acceptance" issued by the Austrian Embassy in Washington, DC or an Austrian Consulate General in the United States; for the latter, two passport photos must be provided.

Generally, persons who are not Austrian citizens will not be admitted into Austria. If, however, in a specific case and under specific circumstances (e.g. on the basis of a bilateral agreement or due to international practice) deportation of a foreign citizen to Austria is sought, a decision of the competent Austrian authorities must in every instance be obtained through the nearest diplomatic or consular representation of Austria. If admission has been granted, a "Certificate of Acceptance" will be issued.

## AUSTRALIA

(Rev. 2/25/2000)

Embassy Address: 1601 Massachusetts Avenue, NW  
Washington, DC 20036

Contact: Michael Corbett

Position: Director Consular, Passports, Protocol, Visits and Travel

Phone: (202) 797-3277

Fax #: (202) 797-3331

Web Site: [www.austemb.org](http://www.austemb.org)

E-Mail: Michael.Corbitt@dfat.gov.au

Mandatory Notification pursuant to 8 CFR236.1(e)? NO

Courtesy Notification? YES

## **Appendix 16-2 U.S. Canada Reciprocal Agreement for the Exchange of Deportees (Added DD99-05)**

U.S. - Canada Reciprocal Arrangement for the Exchange of Deportees

The following Reciprocal Arrangement between the United States Immigration and Naturalization Service and the Canada Employment and Immigration Commission for the exchange of deportees between the United States and Canada, signed on provides:

### I. REQUESTS AND NOTIFICATIONS:

To provide for the orderly and expeditious return of deportees under his Arrangement between the Immigration Services of Canada and the United States, The Service of the

deporting country will transmit to the administrative head of the other Service, or a designated representative, the following:

- A. A notice of return or a request for consent to return the deportee as specified in Parts II and III of this Arrangement containing such identifying and biographical information as may be necessary to establish that the deportee is returnable under the terms of this Arrangement;
- B. Advance notice accompanied by a written opinion of a competent authority confirming the need for institutional care or treatment should the deporting Service possess evidence to suggest that any deportee requires such care or treatment because of a mental or physical condition. The deporting Service will, at the same time as notice is given or consent is sought, provide the receiving Service with advance written notice of the facts and circumstances of the case. The advance notice will be accompanied by a copy of written opinion regarding institutional care or treatment. At the same time, or as soon as is administratively possible thereafter, the deporting Service will notify the receiving Service of the deportee's travel arrangements;
- C. In the case of a deportee who is of interest to law enforcement authorities in the receiving country, advance notice of the facts and circumstances of the case, including travel arrangements, to facilitate procedures at the port of entry;
- D. A written notice of the facts and circumstances of a denial of admission and parole or issuance of a minister's permit, whenever an individual is paroled or allowed, pursuant to a minister's permit, into the deporting country for legal proceedings or for humanitarian reasons or to permit the individual to apply for relief under the immigration laws of the deporting country. Such notice will be given immediately after denial of admission and parole or issuance of minister's permit to the immigration official in charge of the port of entry opposite the port of entry where parole was granted or where the minister's permit was issued.
- E. A written notice of the facts and circumstances relating to an alien authorized by the Immigration Appeal Board to return to Canada from the United States for the purpose of appearing before the Board for the hearing of the appeal from the removal order issued to that alien. Such notice will be made immediately upon the arrival of the individual in Canada, to the immigration official in charge of the opposite port of entry.

## II. NOTICE OR RETURN OF CITIZENS, NATIONALS OR ALIENS:

### 1. Citizens or Nationals

Deportees who are citizens or national of Canada or the United States will be received by their country of citizenship or nationality under the terms of this Arrangement.

Before a citizen or national is returned to Canada or the United States, verbal notice will be given to those cases where:

A. Citizenship or nationality in the receiving country can be satisfactorily established by presentation of a birth or baptismal certificate, a certificate of naturalization or citizenship, a valid or expired passport, or other verifiable evidence of citizenship or nationality; and

B. The deportee does not require institutional care or treatment because of a mental or physical condition.

In the case of a citizen or national deportee who requires institutional care or treatment because of a mental or physical condition, written notice will be given to the receiving country.

## 2. Aliens

A. Aliens of the receiving country, who proceeded directly from the receiving country to the departing country and were paroled or allowed under the authority of a minister's permit into the departing country, will be permitted to return to the receiving country under the terms of this Arrangement provided verbal notice is given to the receiving country within one year of revocation or expiration of such parole or minister's permit or from the date of a final order of deportation, whichever is the later.

B. An alien, as described in Part III, paragraph 2., Authorized by the Immigration Appeal Board to return to Canada from the United States for the purpose of appearing before the Board for the hearing of the appeal from the removal order issued to that alien will be permitted to return to the United States provided:

(i) the alien met the requirements of Part III of paragraph 2a. and b. at the time the removal order was made; and

(ii) verbal notice is given to the United States Immigration and Naturalization Service upon the Alien's departure from Canada at the conclusion of the hearing.

## III. CONSENT TO RETURN ALIENS:

Any of the classes of aliens hereinafter defined, even though such persons would be subject to deportation by the receiving country, will be permitted to return to Canada or the United States under the terms of this Arrangement

provided:

1. The alien was admitted to the receiving country for permanent residence and:

a. The alien has not abandoned such residence by residing in a third country; and

b. The alien proceeded directly from the receiving country to the departing country and was not admitted for permanent residence at that time; and

- c. Formal request is made for consent to return the alien within one year from the date of a final order of deportation; and
  - d. The alien came into the deporting country on or subsequent to August 1, 1949, or
2. The alien was not admitted to the receiving country for permanent residence but:
- a. The alien was denied admission at a port of entry and was ordered removed from the deporting country; and
  - b. The alien proceeded directly from the receiving country to the deporting country; and
- c. Formal request for consent to return the alien is made within one year from the date of a final order of removal.

Before a deportee described in paragraphs 1 or 2 above is returned to Canada or the United States, a letter consenting to such return will first be obtained from the receiving Service.

A deportee described in paragraph 2 above will be permitted to return to the United States or Canada under the terms of this Arrangement, provided appropriate arrangements are made in the receiving country for a deportee who requires medical evaluation or institutional care or treatment. The receiving Service will undertake to arrange appropriate reception as expeditiously as possible.

#### IV. TRANSPORTATION AND SUBSISTENCE:

The deporting Service will furnish a deportee with transportation and subsistence to the port of entry of the receiving country closest to the port of exit of the deporting country. Where, however, a deportee does not have sufficient funds to travel to the deportee's last place of residence in the receiving country at the person's own expense, the deporting country will furnish transportation and subsistence to the last place of residence. In exceptional and meritorious cases, transportation and subsistence may be provided to such other place as is acceptable to the deporting Service, provided the receiving Service has no objection to the substitution.

Where a transportation company is liable to carry the deportee, the deportee will be carried to such place as is required by law.

#### V. VOLUNTARY DEPARTURE:

The return of persons granted voluntary departure as defined in Part X of this Arrangement is not governed by Parts II or III of this Arrangement. Whenever possible, however, such a person will be required to enter the receiving country at the port of entry which is nearest to the place of final destination in the receiving country.



## VI. PORTS OF ENTRY:

Any deportee returned as provided for in Parts II and III of this Arrangement will be presented to any of the ports of entry listed hereunder for examination or inspection:

CANADA

UNITED STATES

Aldergrove, British Columbia

Alcan, Alaska

Armstrong, Quebec

Baltimore/Washington International Airport Baltimore, Maryland

Beaver Creek, Yukon Territory

Bangor, Maine

Blackpool, Quebec

Bar Harbour, Maine

Calgary International Airport,

Calgary, Alberta

Blaine, Washington

Cornwall, Ontario

Boston, Massachusetts

Coutts, Alberta

Buffalo, New York

Douglas, British Columbia

Calais, Maine

Edmonton International Airport,

Calgary International Airport

Edmonton, Alberta

(Pre-Flight Inspection)

Edmundston, New Brunswick

Champlain, New York

Emerson, Manitoba

Cleveland Airport,

Cleveland, Ohio

Fort Erie, Ontario

Derby Line, Vermont

Fort Frances, Ontario

Detroit, Michigan

Fredericton Airport

Eastport, Idaho

Fredericton, New Brunswick

Edmonton International Airport

Halifax International Airport,

(Pre-Flight Inspection)

Halifax, Nova Scotia

Frontier, Washington

Hamilton Civic Airport,

Hamilton, Ontario

Highgate Springs, Vermont

Highwater, Quebec

Houlton, Maine  
Huntingdon, British Columbia  
International Falls, Minnesota  
Kingsgate, British Columbia  
Ketchikan, Alaska  
Lansdowne, Ontario  
Lynden, Washington  
London Airport, London, Ontario  
Madawaska, Maine  
Mississauga, Ontario-Pearson  
Massena, New York  
International Airport,  
Terminals 1 and 2  
Minneapolis, Minnesota  
Montreal International Airport,  
Montreal International Airport,  
Dorval, Quebec  
Dorval, Quebec  
(Pre-Flight Inspection)  
Montreal International Airport,  
Mirabel, Quebec  
New York, New York  
Niagara Falls, Ontario

Niagara Falls, New York  
North Portal, Saskatchewan  
North Troy, Vermont  
Osoyoos, British Columbia  
Norton, Vermont  
Ottawa International Airport,  
Noyes, Minnesota  
Ottawa, Ontario  
Ogdensburg, New York  
Phillipsburg, Quebec  
Oroville, Washington  
Prescott, Ontario  
Pittsburgh, Pennsylvania  
Prince Rupert, British Columbia  
Port Angeles, Washington  
Quebec International Airport,  
Quebec, Quebec  
Port Huron, Michigan  
Regina Airport,  
Portal, North Dakota  
Regina, Saskatchewan  
Portland, Maine  
Rock Island, Quebec

Raymond, Montana  
Saint John Municipal Airport,  
Saint John, New Brunswick  
Sault Ste. Marie, Michigan  
St. Leonard, New Brunswick  
Seattle, Washington  
St. Stephen, New Brunswick  
Sumas, Washington  
Sarnia, Ontario  
Sweetgrass, Montana  
Saskatoon Airport  
Syracuse, New York  
Saskatoon, Saskatchewan  
Thousand Island Bridge, New York  
Sault Ste. Marie, Ontario  
Toronto, Ontario, Canada- Pearson  
Stanhope, Quebec  
International Airport, Mississauga, Ontario  
(Pre-Flight Inspection)  
Thunder Bay, Ontario  
(Formerly Toronto International Airport)  
Vancouver International Airport,  
Vancouver International Airport

Vancouver, British Columbia

(Pre-Flight Inspection)

Victoria, British Columbia

Washington, District of Columbia

(Dulles International Airport)

Windsor, Ontario

Winnipeg International Airport

Winnipeg International Airport,

(Pre-Flight Inspection)

Winnipeg, Manitoba

Woodstock, New Brunswick

Yarmouth, Nova Scotia

## VII. OFFICIAL RECORDS AND PRIVACY CONSIDERATION

A. The United States Immigration and Naturalization Service may use the information supplied by the Immigration Service of Canada for the purpose of ascertaining whether the deportee is wanted by U.S. law enforcement authorities; it may further provide to such authorities information supplied by the Immigration Service of Canada pursuant to this Arrangement for the said purpose and to facilitate the apprehension of the deportee by proper law enforcement authorities.

B. The United States Immigration and naturalization Service will not use or disclose information supplied by the Immigration Service of Canada for a purpose or to an authority other than specified in this Arrangement without the written consent of the Immigration Service of Canada.

## VIII. CONSULTATION AND AMENDMENT PROVISIONS:

The Parties agree to discuss matters which are the subject of this Arrangement and to make any amendments considered appropriate. Any disputes or issues of interpretation will be resolved by mutual agreement of the Parties.

## IX. TERMINATION PROVISION:

This Arrangement remains in full force and effect unless terminated in writing. This Arrangement may be terminated by either Party by giving written notice to the other Party at least one year prior to such termination.

#### X. DEFINITIONS:

The following terms are defined for the purpose of this Arrangement only, and like terms have a like meaning:

##### CANADA

##### UNITED STATES

##### ADMISSION

Lawful permission to come into Canada as a visitor  
or to establish permanent residence.

Lawful permission for an alien to enter the United States.

##### ALIEN

Any person who is not a Canadian citizen.

Any person who is not a citizen or national of the United States.

##### DEPORTEE

Any of the persons described in Parts II and III of this Arrangement.

Any of the persons described in Parts II and III of this Arrangement.

##### ENTRY

Lawful permission to come into Canada as a visitor. Visitor means a person who is lawfully in Canada, or seeks to come into Canada for a temporary purpose, other than a Canadian citizen, a permanent resident, a person in possession of a minister's permit, or an immigrant authorized to come into Canada pursuant to paragraph 14(2)(b), 23(1)(b), or 32(3)(b) of the Immigration Act, 1976, as amended.

Any coming of an alien into the United States, from a foreign port or place or from an outlying possession, whether voluntarily or otherwise, except that an alien having a lawful permanent residence in the United States shall not be regarded as making an entry into the United States for the purposes of the immigration laws if the alien proves to the satisfaction of the Attorney General that departure to a foreign port or place or to an

outlying possession was not voluntary: Provided, that no person whose departure from the United States was occasioned by deportation proceedings, extradition, or other legal process shall be held to be entitled to such exception.

## EXCLUSION

A formal determination of inadmissibility

A formal determination of inadmissibility.

## FINAL ORDER OF REMOVAL

A signed exclusion order or deportation order not stayed pursuant to the Immigration Act, 1976, as amended.

A signed exclusion order or deportation order ready for execution and unimpeded by legal challenge.

## LEGAL PROCEEDINGS

All proceeding authorized or sanctioned by law and brought or or instituted in a court of record or administrative tribunal for the recognition of a right or an enforcement of a remedy.

All proceedings authorized or sanctioned by law and brought or instituted in a court of record or administrative tribunal for the recognition of a right or an enforcement of a remedy.

## MINISTER'S PERMIT/PAROLE

A valid and subsisting written permit, issued at the discretion of the Minister of Employment and Immigration or a delegate, authorizing an inadmissible person to come into and remain in Canada.

An exercise of discretionary authority of the Attorney General to permit an inadmissible alien to come into the United States for emergent reasons, or for reasons deemed strictly in the public interest.

## PERMANENT RESIDENT/ PERMANENT RESIDENCE

A person lawfully admitted for residence, who has not become a Canadian citizen and has not ceased to be a permanent resident.

The status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.



## REMOVAL ORDER

An exclusion order or a deportation order.

An exclusion order or a deportation order.

## VOLUNTARY DEPARTURE

Permission to depart Canada voluntarily granted to a person:

Authorization for a person to depart the United States prior to the commencement of deportation proceedings or subsequent to a deportation hearing.

- a. Against whom a removal order has been made; or
- b. Who has been issued a departure notice; or
- c. Who has become the subject of a direction for inquiry or has been arrested for inquiry.

## XI. EFFECTIVE DATE:

This Arrangement will be effective on its signature by authorized representatives of the Parties. The present Arrangement will supersede the Arrangement for the Exchange of Deportees between Canada and the United States, of August 1, 1949.

DONE in duplicate this 24th day of July A.D., 1987 at Williamsburg, Virginia, United States of America, in English and in French, each language version being equally authentic."

FOR THE UNITED STATES

IMMIGRATION AND NATURALIZATION SERVICE,

DEPARTMENT OF JUSTICE

S/ Alan C. Nelson

Commissioner

FOR THE CANADA EMPLOYMENT AND IMMIGRATION COMMISSION

S/ James B. Bissett

## **Appendix 16-3 Notification of Alien Removal and Criminal History Forms**

NOTIFICATION OF ALIEN REMOVAL/NOTIFICACION DE TRASLADO DE  
EXTRANJERO/NOTIFICATION DENLEVEMENT DETRANGER

Instructions: 3 business days prior to the removal of all criminal aliens and all escorted aliens, the removing office must complete and fax pages 1 and 2 of this form to (1,2,3) below. ESCORTS MUST HAVE COUNTRY CLEARANCE. For country clearance both pages must also be faxed 3 business days prior to the removal to DOS (4) and indicate if overnight accommodations are required or not.

1.  EMBASSY/CONSULATE OF:

ATTN.:

TEL:

Fax:

2.  HQINS/DDP/DEPORTATION MANAGEMENT BRANCH, TEL: 202-616-7812,  
Fax: 202-514-0122/0555

3.  HQINS/OIA/DESK, 202-305-2754, Fax: 202-514-6453

4.  DOS/BUREAU OF DIPLOMATIC SECURITY/CRIMINAL INVESTIGATIONS  
DIVISION; TEL:202-663-0383; FAX:202-663-0656

Point of Contact -Originating Office - (Persona a Contactar; Personne a Contacter):

Telephone & Fax Number (Numeros de telefono y de fax; Numeros de telephone et de fax):

ALIEN PROFILE INFORMATION /INFORMACION SOBRE  
EXTRANJERO/RENSEIGNEMENTS SUR ETRANGER

Instructions: Provide the following information on unescorted and escorted aliens.

1. Name: (Nombre; Nom)

Alien # (Numero De Extranjero; Nombre Detranger)

Sex M/F

2. Date And Place of Birth (Fecha Y Lugar De Nacimiento; Date et Lieu De Naissance):

3. Travel Document (Country) And Number ( Documento De Viaje (Pais) Y Numero;  
Document De Voyage (Pays) et Nombre):

4. Legal Grounds For Removal Which Serves as The Basis of Removal (Base Legal Para El Traslado, La Cual Sirve Como Base Para Traslado; Motif Legal Pour

Lenlevement, Lequel Sert Comme Motif Legal Pour Lenlevement): Please Use Plain English. No Legal Citations Please:

5. History of Criminal Convictions (Attached)/Fecha De Condenas (Adjunta)/Dossier Des Condamnations (Adjoint): (Circle) Yes or No

6. Special Care Considerations (Mental; Medical; Media Interest; Etc.); (Consideraciones De Cuidado Especial (Psiquiatricas, Medicas, Interes De La

Prensa, Etc.); Considerations Pour Des Soins Speciales (Psychiatrique, Medicales, Internet De La Presse, Etc.):

ALIENS AND ESCORTS TRAVEL ITINERARY /ITINERARIO DE VIAJE/  
ITINERAIRE DU VOYAGE

Instructions: This information should be provided for all escorted and criminal unescorted removals.

CITY/CIUDAD/VILLE

DATE/FECHA/DATE

TIME/HORA/HEURE

AIRLINE/AEROLINEA/

COMPAGNIE D'AVIATION

FLIGHT#

VUELO#

VOL#

DEPART/ARRIVE

DEPART/ARRIVE

DEPART/ARRIVE

DEPART/ARRIVE

NAME & ALIEN #

PAGE 1

ESCORTED: Yes / No; ESCOLTADO: Si / No; ESCORTE: Oui / Non

Instructions: All INS officers on escort details, criminal and non-criminal, require country clearance. To obtain clearance, provide the following information to Diplomatic Security three business days prior to travel. Are overnight accommodations required? (Circle) Yes or No.

NAME/NOMBRE/NOM:

OFFICIAL PASSPORT #

EXP.

NAME/NOMBRE/NOM:

OFFICIAL PASSPORT #

EXP.

Instructions: Provide the criminal history information using the complete four-digit NCIC code:

CODE

CLAVE

INDICE

CONVICTION DATE & PLACE

FECHA Y LUGAR DE CONDENA

DATE ET LIEU DE CONDAMNATION

CODE

CLAVE

INDICE

CONVICTION DATE & PLACE

FECHA Y LUGAR DE CONDENA

DATE ET LIEU DE CONDAMNATION

CODE

CLAVE

INDICE

CONVICTION DATE & PLACE

FECHA Y LUGAR DE CONDENA

DATE ET LIEU DE CONDAMNATION

CODE

CLAVE

INDICE

VIOLATION

INFRACCION

CONTRAVENTION

CODE

CLAVE

INDICE

VIOLATION

INFRACCION

CONTRAVENTION

CODE

CLAVE

INDICE

VIOLATION

INFRACCION

CONTRAVENTION

CODE

CLAVE

INDICE

VIOLATION

INFRACCION

CONTRAVENTION

0100

Sovereignty (Soberania; Souverainete)

2100

Extortion (Exaccion; Extorsion)

3800

Family Offenses (Delitos Familiares; Delits de Famille)

5600

Civil Rights (Derechos Civiles; Droits Civiques)

0200

Military (Militar; Militaire)

2200

Burglary (Allanamiento de Morada; Cambriolage)

3900

Gambling (Juego Illicito; Jeu Illicite)

5700

Invasion of Privacy (Invadir la Privacidad; Incursion dans la Vie Privee)

0300

Immigration (Inmigracion; Immigration)

2300

Larceny (Hurto; Vol Simple)

4000

Commercialized Sex (Comercio en Sexo; Commerce Sexuel)

5800

Smuggling (Contrabando; Contreband)

0900

Homicide (Homicidio; Homicide)

2400

Stolen Vehicle (Vehiculo Hurtado; Vehicule Vole)

4100

Liquor (Licor Espiritoso; Spiritueux)

5900

Elections Laws (Leyes Electorales; Lois Electorelle)

1000

Kidnapping (Secuestro, Rpto; Enlevement, Rapt)

2500

Forgery (Falsificacion; Contrefaon)

4800

Obstructing the Police (Obstruccion la Policia; Obstruction a la Police)

6000

Antitrust (Antimonopolio; Anti-Monopole)

1100

Sexual Assault (Agresion Sexual; Violentation)

2600

Fraudulent Activities (Fraudulencia; Caractere Frauduleux)

4900

Flight/Escape (Fuga/Escape; Fuite/Evasion)

6100

Tax Revenue (Ingresos de Impuestos; Revenue DImpots)

1200

Robbery (Atraco; Vol)

2700

Embezzlement (Malversacion, Desfalco; Detournement de Fonds)

5000

Obstructing Judiciary\*\* (Obstruccion Judiciatura; Obstruction Magistrature)

6200

Conservation (Preservacion; Preservation)

1300

Assault (Agresion; Agression)

2800

Stolen Property (Propiedad Robada; Propriete Volee)

5100



Bribery (Soborno; Corruption)

7000

Crimes against Person (Delito contra Persona; Delit contre Personne)

1400

Abortion (Aborto; Avortement)

2900

Damage Property (Danar Propiedad; Degats Materiels)

5200

Weapons Offenses (Delito de Armas; Delit DArmes)

7100

Property Crimes (Delito contra Propiedad; Delit contre Propriete)

1600

Threats (Amenaza; Menace)

3500

Dangerous Drugs (Drogas Peligrosas; Drogues Dangereux)

5300

Public Peace (Orden Publico; LOrdre Public)

7200

Morals-Decency Crimes (Delito contra la Moral; Delit contre la Moralite)

1700

Material Witness (Testigo; Temoin)

3600

Sex Offenses\* (Delitos Sexuales; Delits Sexuelles)

5400

Traffic Offenses (Delito de Circulacion; Delit de Circulation)

7300

Public Order Crimes (Delitos contra el Orden Publico; Delit contre LOrdre Public)

2000

Arson (Incendio Provocado; Incendie Volontaire)

3700

Obscenity (Obscenedad; Obscenite)

5500

Health/Safety (Salud/Seguridad; Sante/Srete)

8100

Juvenile Crimes (Delitos Juveniles; Delits de Jeunesse)

\*Not involving assault or commercialized sex (No implica agresion o comercio en sexo;  
Ne implique pas agresion ou commerce sexuel)

\*\*Also the Congress, Legislature, etc. (Tambien el Congreso, Legislatura, etc.; Aussi le  
Corps Legislatif, etc.)

NAME & ALIEN #

PAGE 2

## **Appendix 16-4 Enforcement Standards on Use of Restraints and Escorts**

INS Enforcement Standards - Part 1

1. [Use of Restraints](#)
2. [Escorts](#)

INS Enforcement Standard - Part 2

1. [Enforcement Standard Pertaining to the Escorting of Aliens](#)

ENFORCEMENT STANDARD

USE OF RESTRAINTS

I. PURPOSE: This policy establishes guidelines for the use of restraints on persons detained under the authority of the Immigration and Nationality Act (INA) by all officers of the Service. Previously issued Immigration and Naturalization Service (INS) policy and guidelines on this subject are superseded by this policy.

This policy applies to all INS personnel who apprehend, take into custody, or otherwise detain persons, with or without warrant, as authorized in the INA, as amended and delineated in Title 8, Code of Federal Regulations.

II. AUTHORITY:

Title 8, United States Code, Section 1357 (Section 287, INA), and Title 8, Code of Federal Regulations, Section 287 (8 CFR 287).

III. POLICY/STANDARD:

It shall be Service policy that:

A. The use of restraints on persons in INS custody, consistent with other INS policy standards, shall be in a manner that is safe, secure, humane, and professional. See Escort standard and specific job series handbooks.

B. Except in exigent situations, officers shall only use restraints for which they have received INS authorized training. INS supervisors and managers shall not approve or provide training on restraining devices not authorized by headquarters.

C. Each officer will make an assessment of the detainees risks to the public, the

(b)(2)High

E. Only that amount of restraint needed to ensure the safety of the officer, the detainee, and the public and/or to prevent escape, shall be employed.

F. Officers shall only restrain persons in a manner consistent with appropriate training approved and/or provided by the Service.

G. At no time shall any gag or tape be placed in or over a detainees mouth or nose, nor shall any restriction be placed upon the person that shall in any way impair, restrict, prevent, or stop that persons ability to breathe.

H. When an officer determines that conditions warrant the use of restraints for members of a family unit, females or juveniles, the officer must be able to articulate the conditions which require the restraints, in accordance with Standard III. C.

(b)(2)High

J. Consistent with the policy in Standard III. C. above, officers should strive to avoid exposing restrained detainees to unnecessary public display.

K. No detainee shall be handcuffed to any part of a vehicle or other conveyance at any time; nor shall any detainee be handcuffed or otherwise restrained and left unattended by an immigration officer. The term unattended is understood not to contemplate brief absences to handle emergent circumstances.

L. Removal or application of restraints during transportation or escort shall be at the discretion of the officer.

M. The level and types of restraints used shall be reasonable under the circumstances. Restraints shall not be used to inflict punishment, nor to restrict blood circulation or breathing. Officers shall take reasonable and prudent care to avoid causing unnecessary discomfort in applying restraints.

#### IV. RESPONSIBILITIES:

It shall be the responsibility of managers and supervisors to disseminate the Restraint Policy and to ensure officers receive headquarters-approved training before they carry out their duties. It is also the responsibility of managers and supervisors to provide officers with appropriate restraining devices, including keys and tools necessary to release detainees.

It is the responsibility of managers, supervisors, and officers to convey all known information of escape risks, criminal background or involvement, violence or medical indications to escorting officers. When a detainee presents a known escape risk,

supervisors should plan additional precautions such as more escorts, appropriate restraints, or alternate arrangements.

Officers should ensure the necessary restraints, keys and tools provided by managers and supervisors are available for any scheduled escort of detainees.

#### V. DEFINITIONS:

Adult - A male or female person believed to be 18 years of age or older.

Contraband - Any item possessed by a detainee which is prohibited by the INS or by law.

Detainee - Any person, regardless of citizenship or nationality, under arrest, detained, restrained, or confined by the INS or any other law enforcement agency.

Escape Risk - Any detainee who, in the assessment of an INS officer, may attempt escape from INS custody if not otherwise prevented. An individual who will actively seek opportunities to escape from INS custody.

Juvenile - A person known or reasonably believed not to have reached his/her 18th birthday.

Medical professional - A licensed doctor, nurse, practitioner, technician, or aide trained to treat, provide care, administer medication or services specific to the medical needs of the person being escorted.

Pat-down Search - An examination in which an officer's hands briefly make contact with a detainee's body and clothing in order to detect and remove contraband and/or weapons.

Restraining device - Any physically attached or applied device having the purpose of preventing, restricting, limiting, or controlling the movements of the person on whom they are applied.

Weapon - Any object, item, or device that may be used to cause physical injury, incapacitate, or diminish capability, temporarily or permanently.

#### VI. CLASSIFICATION OF DETAINEES:

(b)(2)High, (b)(7)e

(b)(2)High., (b)(7)e

(b)(2)High, (b)(7)e

(b)(2)High, (b)(7)e



(b)(2)High, (b)(7)e

## ENFORCEMENT STANDARD

### ESCORTS

#### I. PURPOSE:

This policy establishes guidelines for escorting persons detained under the authority of the Immigration and Nationality Act (INA) by Department of Homeland Security (DHS) personnel. Previously issued DHS, and legacy Immigration and Naturalization Service (INS), policy and guidelines on this subject are superseded by this policy, except the legacy INS Detention Standards dated September 20, 2000.

This policy applies to all DHS personnel who apprehend, take into custody, transport or otherwise detain persons, with or without warrant, as authorized in the INA, as amended and delineated in Title 8, Code of Federal Regulations (C.F.R.) while conducting Detention and Removal Activities.

#### II. AUTHORITY:

8 U.S.C. 1357 (INA 287), and 8 CFR 287.

#### III. POLICY/STANDARD:

It shall be DHS policy that:

A. All detainees in DHS custody shall be escorted in a manner that is safe, secure, humane, and professional.

B. All detainees will be escorted in accordance with classifications and procedures found within this standard. No detainee will be transported for any purpose without an assessment performed in accordance with the Use of Restraints standard.

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(b)(2)High, (b)(7)e

## V. DEFINITIONS:

**Adult** A male or female person believed to be 18 years of age or older.

**Classification Officer** A DHS officer designated by a supervisor to determine the escort classification of a detainee while performing Detention and Removal activities.

**Contraband** Any item possessed by a detainee that is prohibited by the DHS or by law.

**Detainee** Any person, regardless of citizenship or nationality, under arrest, detained, restrained, escorted, or confined by DHS or any other law enforcement agency.

**Escape Risk** Any detainee who, in the belief of a DHS officer, may attempt escape from DHS custody if not otherwise prevented. An individual who will actively seek opportunities to escape from DHS custody.

**Escort** To transport or otherwise move any person detained under the immigration laws of the United States (8 U.S.C. 1101 et seq.).

**Immediate Relative** A person being one of the following to a detainee: spouse, parent, grandparent, child, sibling, aunt, uncle, or legal guardian. When applied to a juvenile, the immediate relative must be an adult.

**Juvenile** A person known or reasonably believed not to have reached his/her 18<sup>th</sup> birthday.

**Medical Professional** A licensed doctor, nurse practitioner, technician, or aide trained to treat, provide care, administer medication, or perform services specific to the medical needs of the person being escorted.

**Officer** Any officer or agent employed by DHS

**Pat-down Search** An examination in which an officers hands briefly make contact with a detainees body and clothing in order to detect and remove contraband and/or weapons.

**Unaccompanied Female** A female not in the company of an immediate relative.

**Unaccompanied Juvenile** A juvenile not in the company of an adult immediate relative.

**Weapon** Any object, item, or device that may be used to cause physical injury, incapacitate, or diminish capability, temporarily or permanently.

Note: these definitions are only for purposes of this Enforcement Standard.

## VI. PROCEDURES:

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(b)(2)High, (b)(7)e

(b)(2)High, (b)(7)e

(b)(2)High, (b)(7)e

(b)(2)High, (b)(7)e



(b)(2)High, (b)(7)e

ENFORCEMENT STANDARD

16.4 Part 2 [Enforcement Standard Pertaining to Escorting of Aliens](#)

**Appendix 16-5 Exchange Of Letters Between The United States and Canada on the Removal of Their Nationals to Third Countries**

WHA Press Guidance

January 13, 2004

Exchange of Letters Between

THE UNITED STATES AND CANADA ON THE

REMOVAL OF THEIR NATIONALS TO THIRD COUNTRIES

Question: Please explain the recently concluded exchange of letters between the United States and Canada on the removal of Canadian nationals to third countries.

A:

THE UNITED STATES AND CANADA HAVE EXCHANGED LETTERS PROVIDING THAT, WHEN A NATIONAL OF ONE COUNTRY IS SUBJECT TO INVOLUNTARY REMOVAL FROM THE OTHER COUNTRY TO A THIRD COUNTRY, THE TWO COUNTRIES WILL ADVISE AND CONSULT WITH EACH OTHER.

Question: Please give an example of how this exchange would work.

A:

AS AN EXAMPLE, IF A U.S. NATIONAL WERE SUBJECT TO INVOLUNTARY REMOVAL FROM CANADA TO A COUNTRY OTHER THAN THE UNITED STATES, CANADA WOULD ADVISE AN AMERICAN PRINCIPAL POINT OF CONTACT OF THE INTENDED REMOVAL. THE UNITED STATES WILL SIMILARLY ADVISE THE CANADIAN POINT OF CONTACT IN CASES INVOLVING CANADIAN NATIONALS IN THE UNITED STATES.

Question: Is this exchange of letters a binding agreement?

THIS IS AN UNDERSTANDING THAT MERELY SEEKS TO ENSURE NOTICE OF AN INTENT TO REMOVE TO A THIRD COUNTRY, AND PROVIDES A MECHANISM FOR CONSULTATIONS. EACH COUNTRY IS FREE TO MAKE

WHATEVER DECISION IT CONSIDERS APPROPRIATE IN LIGHT OF THE FACTS AND RELEVANT LAW.

Question: Who are the principal points of contact?

A:

THE PRINCIPAL POINT OF CONTACT FOR THE UNITED STATES WILL BE THE ASSISTANT SECRETARY OF STATE FOR CONSULAR AFFAIRS AT THE DEPARTMENT OF STATE; THE PRINCIPAL POINT OF CONTACT FOR CANADA WILL BE THE DIRECTOR GENERAL OF THE CONSULAR AFFAIRS BUREAU OF THE DEPARTMENT OF FOREIGN AFFAIRS AND INTERNATIONAL TRADE.

Question: Is this in response to the Arar case?

A:

IT IS IN RESPONSE TO A REQUEST FROM CANADA THAT WE CLARIFY PROCEDURES AS PART OF OUR LONGSTANDING COOPERATION WITH RESPECT TO MATTERS INVOLVING OUR CITIZENS. THIS EXCHANGE OF LETTERS REFLECTS OUR DETERMINATION TO STRENGTHEN THAT COOPERATION BASED ON RECENT EXPERIENCE.

Background: The case of Maher Arar, a dual Canadian-Syrian detained at the JFK Airport in New York in September 2002, and deported to Syria because of ties to suspected al-Qaeda members, unleashed a storm in Canada. The Canadian government rejected calls for a public or parliamentary inquiry, but Prime Minister Martin, shortly before assuming office, said the Canadian passport must be respected.

Canada proposed a non-binding exchange of letters on notification and consultation in future cases where a citizen of either country is to be involuntarily removed to a third country. The understandings main purpose is to establish a procedure for notifying the other country of the intent to remove one of its nationals to a third country. The letters were signed on January 13 and the exchange was announced following President Bush's bilateral meeting with Prime Minister Martin in Monterrey, Mexico, on the margins of the Special Summit of the Americas on January 13.

Drafted by: WHA/CAN, Velia De Pirro, ext. 72228

H:Mydocuments/zimmermanlibrary/Canada/removal(01.13.04)

Cleared by: WHA:Jderham (ok)

WHA:Ljewell

WHA/CAN:Tbreese(ok)

WHA/PA:Rzimmerman(ok)

P:Rmiles(ok)

D:Kreider(ok)

S/P:Mzarin(ok)

L/WHA:Vbotet(ok)

L/CA:Cbrown(ok)

L:Switten(ok)

S/CT:Ekaplan(ok)

CA/P:Kshannon(ok)

DHS:Moptican(info)

DOJ:Bswartz(info)

## **Appendix 16-6 Treatment of Cuban Asylum Seekers at Land Border Ports of Entry**

June 10, 2005

IPP 05 1562

MEMORANDUM FOR: DIRECTORS, FIELD OPERATIONS

DIRECTOR, PRECLEARANCE OPERATIONS

FROM: Assistant Commissioner

Office of Field Operations

SUBJECT: Treatment of Cuban Asylum Seekers at Land Border Ports of Entry

This memorandum amends current policy with respect to Cubans who arrive at land border ports of entry and seek asylum, and provides that such aliens should be placed in proceedings pursuant to section 240 of the Immigration and Nationality Act (INA) rather than in expedited removal proceedings. To that extent, it revises the procedures set forth in a January 29, 2002 memorandum issued by the former Immigration and Naturalization Service (INS) and entitled Aliens Seeking Asylum at Land Border Ports-of-Entry. The

revision brings the treatment of Cubans arriving at land border ports of entry in line with that of Cubans arriving at airports, by sea, or between ports of entry at specified locations.

The differential treatment of Cubans dates back to the passage of the Cuban Adjustment Act of 1966, Pub. L. No. 89-732, 80 Stat. 1161 (1966). Under the Cuban Adjustment Act of 1966, natives or citizens of Cuba are eligible for adjustment of status to lawful permanent resident provided they meet the following criteria. First, a native or citizen of Cuba must be inspected and admitted or paroled into the United States. Second, he or she must apply for adjustment of status and be eligible for admission as an immigrant. Finally, a native or citizen of Cuba must be physically present in the United States for one year prior to submitting an application for adjustment of status.

Natives or citizens of Cuba do not have to be refugees in order to qualify for legal permanent resident status under the Cuban Adjustment Act of 1966. See *Matter of Mason*, 12 I & N Dec. 699 (BIA 1968). In other words, the refugee status of natives or citizens of Cuba has been determined to be irrelevant to their eligibility for adjustment. See *General Counsel Opinion 91-85* (July 24, 1991). However, as a practical matter, natives or citizens of Cuba often seek asylum at land border ports of entry in order to obtain parole and to document their physical presence in the United States.

The January 29, 2002 memorandum established procedures for the processing of third-country nationals who present themselves at land border ports of entry and seek asylum in the United States. It instructed immigration inspectors to treat all such aliens as applicants for admission. Furthermore, the memorandum instructed them to place asylum-seekers at land border ports of entry into expedited removal proceedings and to detain them pending a final determination of credible fear in accordance with section 235(b) of the INA.

Accordingly, immigration inspectors placed all Cubans found to be inadmissible under section 212(a)(6)(C) or (7) of the INA at land border ports of entry into expedited removal proceedings, referred them for a credible fear interview, and detained them pending a final determination. Most Cubans interviewed by asylum officers were determined to have a credible fear of persecution or torture, placed in section 240 proceedings, and paroled until the date of their removal hearing before an immigration judge. With regard to natives and citizens of Cuba, this policy has resulted in an inefficient use of detention space at land border ports of entry.

This memorandum amends the policy of the former INS in that it addresses circumstances in which expedited removal may not be appropriate for aliens eligible for relief under the Cuban Adjustment Act. Natives or citizens of Cuba who arrive at land border ports of entry should now be processed for section 240 proceedings without lodging additional charges as required by 8 CFR 235.3 for aliens of other nationalities. They may apply for adjustment of status under the Cuban Adjustment Act in section 240 proceedings or pursue their claim of asylum before the immigration judge. See *Matter of Artigas*, 23 I & N Dec. 99 (BIA 2001) (holding that an Immigration Judge has

jurisdiction to adjudicate an application for adjustment of status under the Cuban Adjustment Act).

A native or citizen of Cuba may be paroled from the land border port of entry while awaiting section 240 proceedings provided three conditions have been met: (1) CBP has firmly established the identity of the alien; (2) CBP has conducted all available background checks; and (3) CBP determines that the alien does not pose a terrorist or criminal threat to the United States. Except in exceptional circumstances, a CBP Officer should not parole a native or citizen of Cuba into the United States for the sole purpose of applying for adjustment under the Cuban Adjustment Act without initiating section 240 proceedings.

Pursuant to section 235(b)(2)(C) of the INA, a native or citizen of Cuba may also be returned to contiguous territory pending section 240 proceedings. A CBP Officer should consider this option only if: (1) the alien can not demonstrate eligibility for the exercise of parole discretion; (2) the alien has valid immigration status in Canada or Mexico; (3) Canadian or Mexican border officials express a willingness to accept the returning alien; and (4) the aliens claim of fear of persecution or torture does not relate to Canada or Mexico.

The attached field guidance contains detailed instructions regarding the processing of natives or citizens of Cuba at land border ports of entry. In addition, it lays out procedures developed in the January 2002 memorandum for handling the withdrawal of an application for admission in lieu of initiating expedited removal proceedings.

If you have any questions, please contact Linda Loveless, Director, Immigration Policy, at (202) 344-1438.

/S/ William S. Heffelfinger III for

Jayson P. Ahern

ATTACHMENT

Chapter 17.15(a) of the Inspectors Field Manual is revised to read as follows:

(5) Aliens seeking asylum at land border ports of entry.

Section 235(b) of the INA does not provide for an affirmative asylum application process at a port of entry. Therefore, an officer should consider an alien who arrives at a land border port-of-entry and seeks asylum to be an applicant for admission by operation of law. The alien will most likely be inadmissible under section 212(a)(7)(A)(i) of the INA as an intending immigrant without proper documentation or under section 212(a)(6)(C) of the INA as an immigration violator with fraudulent documents. As a result, he or she will be subject to expedited removal proceedings.

Except as noted below, the alien, if otherwise subject, should be placed in expedited removal proceedings, referred for a credible fear interview, and detained pending a final determination of a credible fear of persecution or torture. See INA 235(b)(1)(B)(iii)(IV); 8 CFR 235.3(b)(4)(ii). Once it has been determined that an alien has a credible fear of persecution or torture, DHS may continue to detain the alien or parole the alien from custody, as appropriate.

(6) Cuban asylum seekers at land border ports-of-entry.

Natives or citizens of Cuba arriving at land border ports of entry, whose immediate removal from the United States is highly unlikely, should be placed directly into section 240 proceedings in lieu of expedited removal, without lodging additional charges. These aliens may be paroled directly from the port of entry while awaiting removal proceedings if identity is firmly established, all available background checks are conducted, and the alien does not pose any terrorist or criminal threat. Pursuant to section 235(b)(2)(C) of the INA, they may also be returned to contiguous territory pending removal proceedings under section 240 of the INA. This option should only be considered if the alien is not eligible for the exercise of parole discretion, the alien has valid status in Canada or Mexico, Canadian or Mexican border officials are willing to accept the alien back, and the claim of fear of persecution is unrelated to Canada or Mexico.

An officer should not parole a native or citizen of Cuba from a land border port of entry for the sole purpose of allowing the alien to apply for adjustment under the Cuban Adjustment Act of 1966, Pub. L. 89-732, 80 Stat. 1161 (1966), without initiating section 240 proceedings. The Cuban Adjustment Act (CAA) provides that any native or citizen of Cuba who has been admitted or paroled into the United States, and who is otherwise admissible as an immigrant, may adjust status to that of a lawful permanent resident after being physically present in the United States for at least one year. It does not, however, require an officer to parole a native or citizen of Cuba at a port of entry without regard to public safety. Therefore, an officer should grant parole to a native or citizen of Cuba only if the alien does not pose a criminal or terrorist threat to the United States.

Chapter 17.15(c) of the Inspectors Field Manual is revised to read as follows:

(c) Withdrawal of application for admission in lieu of an expedited removal order.

DHS has the discretion to allow an inadmissible alien to voluntarily withdraw his or her application for admission and to depart the United States in accordance with section 235(a)(4) of the INA. This discretion applies to aliens subject to expedited removal, and should be applied carefully and consistently, since an officers decision to allow withdrawal or issue a removal order is final. Officers should keep in mind that an order of expedited removal carries with it all the penalties of an order of removal issued by an immigration judge (including a bar to reentry of at least 5 years following removal pursuant to section 212(a)(9)(A)(i)).

Follow the guidelines contained in Chapter 17.2 to determine whether an aliens withdrawal of an application for admission or asylum claim best serves the interest of justice. An officers decision to permit withdrawal of an application for admission must be properly documented by means of a Form I-275, Withdrawal of Application for Admission/Consular Notification, to include the facts surrounding the voluntary withdrawal and the withdrawal of the asylum claim. In addition, an officer should prepare a new sworn statement, or an addendum to the original sworn statement on Form I-867A&B, covering the facts pertaining to the aliens withdrawal of the asylum claim.

An alien may not be pressured into withdrawing his or her application for admission or asylum claim under any circumstances. An officer must provide adequate interpretation to ensure that the alien understands the expedited removal process and the effects of withdrawing an application for admission or an asylum claim. Furthermore, an asylum officer must be consulted before an alien who has expressed a fear of return to his or her home country may be permitted to withdraw an asylum claim.

If an officer permits an alien to withdraw his or her application for admission and elects to return the alien to Canada or Mexico, the Form I-275 should indicate the aliens status in Canada or Mexico and the basis for determination of that status. This determination may be based on contacts with Canadian or Mexican authorities, stamps in the aliens passport, or other available documentation. The narrative on Form I-275 should also indicate that the alien has not expressed concern about returning to Canada or Mexico.

If the alien expresses any concern or reluctance about returning to Canada or Mexico and wishes to pursue the asylum claim in the United States, the officer should advise the alien that he or she will be placed in the expedited removal process, unless subject to section 240 proceedings by statute, regulation, or policy, and will be detained pending the credible fear determination. The alien should not be given the Form I-589, Application for Asylum and for Withholding of Removal, nor should an affirmative asylum interview be scheduled at the port of entry.

## **Appendix 17-1 Zadvydas v. Davis**

(b)(2)High

Supreme Court of the United States

Kestutis ZADVYDAS, Petitioner,

v.

Christine G. DAVIS and Immigration and Naturalization Service.

John D. Ashcroft, Attorney General, et al., Petitioners,

v.



Kim Ho Ma.

Nos. 99-7791 and 00-38.

Argued Feb. 21, 2001.

Decided June 28, 2001.

Resident aliens who had been ordered removed and who were held in custody by Immigration and Naturalization Service (INS) beyond 90-day removal period, due to government's inability to remove them, brought separate habeas petitions seeking release. The United States District Court for the Eastern District of Louisiana, Fallon, J., 986 F.Supp. 1011, granted one petition. The United States Court of Appeals for the Fifth Circuit reversed, 185 F.3d 279. The United States District Court for the Western District of Washington, Lasnik, J., 56 F.Supp.2d 1165, granted other petition. The United States Court of Appeals for the Ninth Circuit affirmed, 208 F.3d 815. Certiorari was granted, and cases were consolidated. The Supreme Court, Justice Breyer, held that: (1) Immigration and Nationality Act's (INA) post-removal-period detention provision contains implicit reasonableness limitation; (2) federal habeas statute grants federal courts authority to decide whether given post-removal-period detention is statutorily authorized; and (3) presumptive limit to reasonable duration of post-removal-period detention is six months.

Vacated and remanded.

Justice Scalia filed dissenting opinion joined by Justice Thomas.

Justice Kennedy filed dissenting opinion joined by the Chief Justice and joined by Justices Scalia and Thomas in part.

West Headnotes

Document1zzHN\_F1 [1] Habeas Corpus

Federal habeas corpus proceedings are available as forum for statutory and constitutional challenges to post-removal-period detention of alien. Immigration and Nationality Act, 241(a)(6), as amended, 8 U.S.C.A. 1231(a)(6); 28 U.S.C.A. 2241(c)(3).

Document1zzHN\_F2 [2] Constitutional Law

When act of Congress raises serious doubt as to its constitutionality, Supreme Court first ascertains whether construction of statute is fairly possible by which question may be avoided.

Document1zzHN\_F3 [3] Aliens

Immigration and Nationality Act's (INA) post-removal-period detention provision does not permit indefinite detention of alien beyond 90-day removal period in event government is unable to remove, but rather contains implicit limitation of detention period to that reasonably necessary to bring about removal; provision that Attorney General "may" continue to detain alien who is "risk to the community or unlikely to comply with the order of removal" is not grant of unlimited discretion, and once removal is no longer reasonably foreseeable, continued detention is no longer authorized under Act. U.S.C.A. Const.Amend. 5; Immigration and Nationality, as amended, 8 U.S.C.A. 1231(a)(6).

Document1zzHN\_F4 [4] Constitutional Law

Government detention violates Due Process Clause unless detention is ordered in criminal proceeding with adequate procedural protections, or there is special justification, such as harm-threatening mental illness, which outweighs individual's constitutionally protected interest in avoiding physical restraint. U.S.C.A. Const.Amend. 5.

Document1zzHN\_F5 [5] Constitutional Law

Due Process Clause protects alien subject to final order of deportation. U.S.C.A. Const.Amend. 5.

Document1zzHN\_F6 [6] Statutes

Primary federal habeas corpus statute grants federal courts authority to decide whether given post-removal-period detention of alien is statutorily authorized; courts are not required to defer to executive branch's view as to whether implicit reasonableness limitation of post-removal-period statute is satisfied, although executive view must be taken into account. Immigration and Nationality Act, 241(a)(6), as amended, 8 U.S.C.A. 1231(a)(6); 28 U.S.C.A. 2241(c)(3).

Document1zzHN\_F7 [7] Habeas Corpus

Presumptive limit to reasonable duration of detention under post-removal-period provision of Immigration and Nationality Act (INA) is six months; after six months, once alien provides good reason to believe that there is no significant likelihood of removal in reasonably foreseeable future, government must respond with evidence sufficient to rebut that showing in order to warrant further detention. Immigration and Nationality Act, 241(a)(6), as amended, 8 U.S.C.A. 1231(a)(6). Syllabus Document1zzFN\_F001\* [FN\*]

Document1zzFN\_B001\* FN\* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See

United States v. Detroit Timber & Lumber Co., 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

After a final removal order is entered, an alien ordered removed is held in custody during a 90-day removal period. If the alien is not removed in those 90 days, the post-removal-period detention statute authorizes further detention or supervised release, subject to administrative review. Kestutis Zadvydas, petitioner in No. 99-7791--a resident alien born, apparently of Lithuanian parents, in a German displaced persons camp--was ordered deported based on his criminal record. Germany and Lithuania refused to accept him because he was not a citizen of their countries; efforts to send him to his wife's native country also failed. When he remained in custody after the removal period expired, he filed a habeas action under 28 U.S.C. 2241. The District Court granted the writ, reasoning that, because the Government would never remove him, his confinement would be permanent, in violation of the Constitution. In reversing, the Fifth Circuit concluded that Zadvydas' detention did not violate the Constitution because eventual deportation was not impossible, good-faith efforts to remove him continued, and his detention was subject to administrative review. Kim Ho Ma, respondent in No. 00-38, is a resident alien born in Cambodia who was ordered removed based on his aggravated felony conviction. When he remained in custody after the removal period expired, he filed a 2241 habeas petition. In ordering his release, the District Court held that the Constitution forbids post-removal-period detention unless there is a realistic chance that an alien will be removed, and that no such chance existed here because Cambodia has no repatriation treaty with the United States. The Ninth Circuit affirmed, concluding that detention was not authorized for more than a reasonable time beyond the 90-day period, and that, given the lack of a repatriation agreement, that time had expired.

Held:

1. Section 2241 habeas proceedings are available as a forum for statutory and constitutional challenges to post-removal-period detention. Statutory changes in the immigration law left habeas untouched as the basic method for obtaining review of continued custody after a deportation order becomes final, and none of the statutory provisions limiting judicial review of removal decisions applies here. Pp. 2497-2498.
2. The post-removal-period detention statute, read in light of the Constitution's demands, implicitly limits an alien's detention to a period reasonably necessary to bring about that alien's removal from the United States, and does not permit indefinite detention. Pp. 2498-2503.
  - (a) A statute permitting indefinite detention would raise serious constitutional questions. Freedom from imprisonment lies at the heart of the liberty protected by the Due Process Clause. Government detention violates the Clause unless it is ordered in a criminal proceeding with adequate procedural safeguards or a special justification outweighs the individual's liberty interest. The instant proceedings are civil and assumed to be nonpunitive, and the Government proffers no sufficiently strong justification for indefinite civil detention under this statute. The first justification-- preventing flight--is

weak or nonexistent where removal seems a remote possibility. Preventive detention based on the second justification-- protecting the community--has been upheld only when limited to specially dangerous individuals and subject to strong procedural protections. When preventive detention is potentially indefinite, this dangerousness rationale must also be accompanied by some other special circumstance, such as mental illness, that helps to create the danger. The civil confinement here is potentially permanent, and once the flight risk justification evaporates, the only special circumstance is the alien's removable status, which bears no relation to dangerousness. Moreover, the sole procedural protections here are found in administrative proceedings, where the alien bears the burden of proving he is not dangerous, without (according to the Government) significant later judicial review. The Constitution may well preclude granting an administrative body unreviewable authority to make determinations implicating fundamental rights. Pp. 2498-2500.

(b) *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 73 S.Ct. 625, 97 L.Ed. 956--in which an alien was indefinitely detained as he attempted to reenter the country--does not support the Government's argument that alien status itself can justify indefinite detention. Once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all persons within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent. Nor do cases holding that, because Congress has plenary power to create immigration law, the Judicial Branch must defer to Executive and Legislative Branch decisionmaking in that area help the Government, because that power is subject to constitutional limits. Finally, the aliens' liberty interest is not diminished by their lack of a legal right to live at large, for the choice at issue here is between imprisonment and supervision under release conditions that may not be violated and their liberty interest is strong enough to raise a serious constitutional problem with indefinite detention. Pp. 2500-2502.

(c) Despite the constitutional problem here, if this Court were to find a clear congressional intent to grant the Attorney General the power to indefinitely detain an alien ordered removed, the Court would be required to give it effect. But this Court finds no clear indication of such intent. The statute's use of "may" is ambiguous and does not necessarily suggest unlimited discretion. Similar related statutes requiring detention of criminal aliens during removal proceedings and the removal period do not show that Congress authorized indefinite detention here. Finally, nothing in the statute's legislative history clearly demonstrates a congressional intent to authorize indefinite, perhaps permanent, detention. Pp. 2502-2503.

3. The application of the "reasonable time" limitation is subject to federal-court review. The basic federal habeas statute grants the federal courts authority to determine whether post-removal-period detention is pursuant to statutory authority. In answering that question, the court must ask whether the detention exceeds a period reasonably necessary to secure removal. It should measure reasonableness primarily in terms of the statute's purpose of assuring the alien's presence at the moment of removal. Thus, if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized. If it is foreseeable, the court should consider the risk of the alien's

committing further crimes as a factor potentially justifying continued confinement. Without abdicating their responsibility to review the detention's lawfulness, the courts can take appropriate account of such matters as the Executive Branch's greater immigration-related expertise, the Immigration and Naturalization Service's administrative needs and concerns, and the Nation's need to speak with one voice on immigration. In order to limit the occasions when courts will need to make the difficult judgments called for by the recognition of this necessary Executive leeway, it is practically necessary to recognize a presumptively reasonable period of detention. It is unlikely that Congress believed that all reasonably foreseeable removals could be accomplished in 90 days, but there is reason to believe that it doubted the constitutionality of more than six months' detention. Thus, for the sake of uniform administration in the federal courts, six months is the appropriate period. After the 6-month period, once an alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must furnish evidence sufficient to rebut that showing. Pp. 2503- 2505.

4. The standard that the Fifth Circuit applied in holding Zadvydas' continued detention lawful seems to require an alien seeking release to show the absence of any prospect of removal--no matter how unlikely or unforeseeable--and thus demands more than the statute can bear. The Ninth Circuit's conclusion that Ma should be released may have rested solely upon the absence of a repatriation agreement without giving due weight to the likelihood of successful future negotiations. P. 2505.

185 F.3d 279 and 208 F.3d 815, vacated and remanded.

BREYER, J., delivered the opinion of the Court, in which STEVENS, O'CONNOR, SOUTER, and GINSBURG, JJ., joined. SCALIA, J., filed a dissenting opinion, in which THOMAS, J., joined, post, p. 2505. KENNEDY, J., filed a dissenting opinion, in which REHNQUIST, C.J., joined, and in which SCALIA and THOMAS, JJ., joined as to Part I, post, p. 2507.

Jay W. Stansell, Seattle, WA, for respondent in No. 00-38. With him on the brief were Thomas W. Hillier II and Jennifer E. Wellman.

Robert F. Barnard, New Orleans, LA, for petitioner in No. 99-7791.

Edwin S. Kneedler, Washington, DC, for respondents in No. 99-7791 and for petitioners in No. 00-38.

Justice BREYER delivered the opinion of the Court.

When an alien has been found to be unlawfully present in the United States and a final order of removal has been entered, the Government ordinarily secures the alien's removal during a subsequent 90-day statutory "removal period," during which time the alien normally is held in custody.

A special statute authorizes further detention if the Government fails to remove the alien during those 90 days. It says: "An alien ordered removed [1] who is inadmissible ... [2] [or] removable [as a result of violations of status requirements or entry conditions, violations of criminal law, or reasons of security or foreign policy] or [3] who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period and, if released, shall be subject to [certain] terms of supervision ...." 8 U.S.C. 1231(a)(6) (1994 ed., Supp. V).

In these cases, we must decide whether this post-removal-period statute authorizes the Attorney General to detain a removable alien indefinitely beyond the removal period or only for a period reasonably necessary to secure the alien's removal. We deal here with aliens who were admitted to the United States but subsequently ordered removed. Aliens who have not yet gained initial admission to this country would present a very different question. See *infra*, at 2500-2501. Based on our conclusion that indefinite detention of aliens in the former category would raise serious constitutional concerns, we construe the statute to contain an implicit "reasonable time" limitation, the application of which is subject to federal-court review.

A

The post-removal-period detention statute is one of a related set of statutes and regulations that govern detention during and after removal proceedings. While removal proceedings are in progress, most aliens may be released on bond or paroled. 66 Stat. 204, as added and amended, 110 Stat. 3009-585, 8 U.S.C. 1226(a)(2), (c) (1994 ed., Supp. V). After entry of a final removal order and during the 90-day removal period, however, aliens must be held in custody. 1231(a)(2). Subsequently, as the post-removal-period statute provides, the Government "may" continue to detain an alien who still remains here or release that alien under supervision. 1231(a)(6).

Related Immigration and Naturalization Service (INS) regulations add that the INS District Director will initially review the alien's records to decide whether further detention or release under supervision is warranted after the 90-day removal period expires. 8 C.F.R. 241.4(c)(1), (h), (k)(1)(i) (2001). If the decision is to detain, then an INS panel will review the matter further, at the expiration of a 3-month period or soon thereafter. 241.4(k)(2)(ii). And the panel will decide, on the basis of records and a possible personal interview, between still further detention or release under supervision. 241.4(i). In making this decision, the panel will consider, for example, the alien's disciplinary record, criminal record, mental health reports, evidence of rehabilitation, history of flight, prior immigration history, and favorable factors such as family ties. 241.4(f). To authorize release, the panel must find that the alien is not likely to be violent, to pose a threat to the community, to flee if released, or to violate the conditions of release. 241.4(e). And the alien must demonstrate "to the satisfaction of the Attorney General" that he will pose no danger or risk of flight. 241.4(d)(1). If the panel decides against release, it must review the matter again within a year, and can review it earlier if conditions change. 241.4(k)(2)(iii), (v).

B

1

We consider two separate instances of detention. The first concerns Kestutis Zadvydas, a resident alien who was born, apparently of Lithuanian parents, in a displaced persons camp in Germany in 1948. When he was eight years old, Zadvydas immigrated to the United States with his parents and other family members, and he has lived here ever since.

Zadvydas has a long criminal record, involving drug crimes, attempted robbery, attempted burglary, and theft. He has a history of flight, from both criminal and deportation proceedings. Most recently, he was convicted of possessing, with intent to distribute, cocaine; sentenced to 16 years' imprisonment; released on parole after two years; taken into INS custody; and, in 1994, ordered deported to Germany. See 8 U.S.C. 1251(a)(2) (1988 ed., Supp. V) (delineating crimes that make alien deportable).

In 1994, Germany told the INS that it would not accept Zadvydas because he was not a German citizen. Shortly thereafter, Lithuania refused to accept Zadvydas because he was neither a Lithuanian citizen nor a permanent resident. In 1996, the INS asked the Dominican Republic (Zadvydas' wife's country) to accept him, but this effort proved unsuccessful. In 1998, Lithuania rejected, as inadequately documented, Zadvydas' effort to obtain Lithuanian citizenship based on his parents' citizenship; Zadvydas' reapplication is apparently still pending.

The INS kept Zadvydas in custody after expiration of the removal period. In September 1995, Zadvydas filed a petition for a writ of habeas corpus under 28 U.S.C. 2241 challenging his continued detention. In October 1997, a Federal District Court granted that writ and ordered him released under supervision. *Zadvydas v. Caplinger*, 986 F.Supp. 1011, 1027-1028 (E.D.La.). In its view, the Government would never succeed in its efforts to remove Zadvydas from the United States, leading to his permanent confinement, contrary to the Constitution. *Id.*, at 1027.

The Fifth Circuit reversed this decision. *Zadvydas v. Underdown*, 185 F.3d 279 (1999). It concluded that Zadvydas' detention did not violate the Constitution because eventual deportation was not "impossible," good-faith efforts to remove him from the United States continued, and his detention was subject to periodic administrative review. *Id.*, at 294, 297. The Fifth Circuit stayed its mandate pending potential review in this Court.

2

The second case is that of Kim Ho Ma. Ma was born in Cambodia in 1977. When he was two, his family fled, taking him to refugee camps in Thailand and the Philippines and eventually to the United States, where he has lived as a resident alien since the age of seven. In 1995, at age 17, Ma was involved in a gang-related shooting, convicted of

manslaughter, and sentenced to 38 months' imprisonment. He served two years, after which he was released into INS custody.

In light of his conviction of an "aggravated felony," Ma was ordered removed. See 8 U.S.C. 1101(a)(43)(F) (defining certain violent crimes as aggravated felonies), 1227(a)(2)(A)(iii) (1994 ed., Supp. IV) (aliens convicted of aggravated felonies are deportable). The 90-day removal period expired in early 1999, but the INS continued to keep Ma in custody, because, in light of his former gang membership, the nature of his crime, and his planned participation in a prison hunger strike, it was "unable to conclude that Mr. Ma would remain nonviolent and not violate the conditions of release." App. to Pet. for Cert. in No. 00-38, p. 87a.

In 1999, Ma filed a petition for a writ of habeas corpus under 28 U.S.C. 2241. A panel of five judges in the Federal District Court for the Western District of Washington, considering Ma's and about 100 similar cases together, issued a joint order holding that the Constitution forbids post-removal-period detention unless there is "a realistic chance that [the] alien will be deported" (thereby permitting classification of the detention as "in aid of deportation"). *Binh Phan v. Reno*, 56 F.Supp.2d 1149, 1156 (1999). The District Court then held an evidentiary hearing, decided that there was no "realistic chance" that Cambodia (which has no repatriation treaty with the United States) would accept Ma, and ordered Ma released. App. to Pet. for Cert. in No. 00-38, at 60a-61a.

The Ninth Circuit affirmed Ma's release. *Kim Ho Ma v. Reno*, 208 F.3d 815 (2000). It concluded, based in part on constitutional concerns, that the statute did not authorize detention for more than a "reasonable time" beyond the 90-day period authorized for removal. *Id.*, at 818. And, given the lack of a repatriation agreement with Cambodia, that time had expired upon passage of the 90 days. *Id.*, at 830-831.

3

Zadvydas asked us to review the decision of the Fifth Circuit authorizing his continued detention. The Government asked us to review the decision of the Ninth Circuit forbidding Ma's continued detention. We granted writs in both cases, agreeing to consider both statutory and related constitutional questions. See also *Duy Dac Ho v. Greene*, 204 F.3d 1045, 1060 (C.A.10 2000) (upholding Attorney General's statutory and constitutional authority to detain alien indefinitely). We consolidated the two cases for argument; and we now decide them together.

II

Document1zzHN\_B1 [1] We note at the outset that the primary federal habeas corpus statute, 28 U.S.C. 2241, confers jurisdiction upon the federal courts to hear these cases. See 2241(c)(3) (authorizing any person to claim in federal court that he or she is being held "in custody in violation of the Constitution or laws ... of the United States"). Before 1952, the federal courts considered challenges to the lawfulness of immigration-related detention, including challenges to the validity of a deportation order, in habeas



proceedings. See *Heikkila v. Barber*, 345 U.S. 229, 230, 235-236, 73 S.Ct. 603, 97 L.Ed. 972 (1953). Beginning in 1952, an alternative method for review of deportation orders, namely, actions brought in federal district court under the Administrative Procedure Act (APA), became available. See *Shaughnessy v. Pedreiro*, 349 U.S. 48, 51-52, 75 S.Ct. 591, 99 L.Ed. 868 (1955). And in 1961 Congress replaced district court APA review with initial deportation order review in courts of appeals. See Act of Sept. 26, 1961, 5, 75 Stat. 651 (formerly codified at 8 U.S.C. 1105a(a)) (repealed 1996). The 1961 Act specified that federal habeas courts were also available to hear statutory and constitutional challenges to deportation (and exclusion) orders. See 8 U.S.C. 1105a(a)(10), (b) (repealed 1996). These statutory changes left habeas untouched as the basic method for obtaining review of continued custody after a deportation order had become final. See *Cheng Fan Kwok v. INS*, 392 U.S. 206, 212, 215-216, 88 S.Ct. 1970, 20 L.Ed.2d 1037 (1968) (holding that 1105a(a) applied only to challenges to determinations made during deportation proceedings and motions to reopen those proceedings).

More recently, Congress has enacted several statutory provisions that limit the circumstances in which judicial review of deportation decisions is available. But none applies here. One provision, 8 U.S.C. 1231(h) (1994 ed., Supp. V), simply forbids courts to construe that section "to create any ... procedural right or benefit that is legally enforceable"; it does not deprive an alien of the right to rely on 28 U.S.C. 2241 to challenge detention that is without statutory authority.

Another provision, 8 U.S.C. 1252(a)(2)(B)(ii) (1994 ed., Supp. V), says that "no court shall have jurisdiction to review" decisions "specified ... to be in the discretion of the Attorney General." The aliens here, however, do not seek review of the Attorney General's exercise of discretion; rather, they challenge the extent of the Attorney General's authority under the post-removal-period detention statute. And the extent of that authority is not a matter of discretion. See also, e.g., 1226(e) (applicable to certain detention-related decisions in period preceding entry of final removal order); 1231(a)(4)(D) (applicable to assertion of causes or claims under 1231(a)(4), which is not at issue here); 1252(a)(1), (a)(2)(C) (applicable to judicial review of "final order[s] of removal"); 1252(g) (applicable to decisions "to commence proceedings, adjudicate cases, or execute removal orders").

We conclude that 2241 habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal-period detention. And we turn to the merits of the aliens' claims.

The post-removal-period detention statute applies to certain categories of aliens who have been ordered removed, namely, inadmissible aliens, criminal aliens, aliens who have violated their nonimmigrant status conditions, and aliens removable for certain national security or foreign relations reasons, as well as any alien "who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal." 8 U.S.C. 1231(a)(6) (1994 ed., Supp. V); see also 8 C.F.R. 241.4(a) (2001). It says that an alien who falls into one of these categories may be detained beyond the

removal period and, if released, shall be subject to [certain] terms of supervision." 8 U.S.C. 1231(a)(6) (1994 ed., Supp. V).

The Government argues that the statute means what it literally says. It sets no "limit on the length of time beyond the removal period that an alien who falls within one of the Section 1231(a)(6) categories may be detained." Brief for Petitioners in No. 00-38, p. 22. Hence, "whether to continue to detain such an alien and, if so, in what circumstances and for how long" is up to the Attorney General, not up to the courts. *Ibid.*

Document1zzHN\_B2 [2] "[I]t is a cardinal principle" of statutory interpretation, however, that when an Act of Congress raises "a serious doubt" as to its constitutionality, "this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided." *Crowell v. Benson*, 285 U.S. 22, 62, 52 S.Ct. 285, 76 L.Ed. 598 (1932); see also *United States v. X-Citement Video, Inc.*, 513 U.S. 64, 78, 115 S.Ct. 464, 130 L.Ed.2d 372 (1994); *United States v. Jin Fuey Moy*, 241 U.S. 394, 401, 36 S.Ct. 658, 60 L.Ed. 1061 (1916); cf. *Almendarez-Torres v. United States*, 523 U.S. 224, 238, 118 S.Ct. 1219, 140 L.Ed.2d 350 (1998) (construction of statute that avoids invalidation best reflects congressional will). We have read significant limitations into other immigration statutes in order to avoid their constitutional invalidation. See *United States v. Witkovich*, 353 U.S. 194, 195, 202, 77 S.Ct. 779, 1 L.Ed.2d 765 (1957) (construing a grant of authority to the Attorney General to ask aliens whatever questions he "deem [s] fit and proper" as limited to questions "reasonably calculated to keep the Attorney General advised regarding the continued availability for departure of aliens whose deportation is overdue"). For similar reasons, we read an implicit limitation into the statute before us. In our view, the statute, read in light of the Constitution's demands, limits an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States. It does not permit indefinite detention.

A

Document1zzHN\_B3 [3]Document1zzHN\_B4 [4] A statute permitting indefinite detention of an alien would raise a serious constitutional problem. The Fifth Amendment's Due Process Clause forbids the Government to "depriv[e]" any "person ... of ... liberty ... without due process of law." Freedom from imprisonment--from government custody, detention, or other forms of physical restraint--lies at the heart of the liberty that Clause protects. See *Foucha v. Louisiana*, 504 U.S. 71, 80, 112 S.Ct. 1780, 118 L.Ed.2d 437 (1992). And this Court has said that government detention violates that Clause unless the detention is ordered in a criminal proceeding with adequate procedural protections, see *United States v. Salerno*, 481 U.S. 739, 746, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987), or, in certain special and "narrow" nonpunitive "circumstances," *Foucha*, *supra*, at 80, 112 S.Ct. 1780, where a special justification, such as harm-threatening mental illness, outweighs the "individual's constitutionally protected interest in avoiding physical restraint." *Kansas v. Hendricks*, 521 U.S. 346, 356, 117 S.Ct. 2072, 138 L.Ed.2d 501 (1997).

The proceedings at issue here are civil, not criminal, and we assume that they are nonpunitive in purpose and effect. There is no sufficiently strong special justification here for indefinite civil detention--at least as administered under this statute. The statute, says the Government, has two regulatory goals: "ensuring the appearance of aliens at future immigration proceedings" and "[p]reventing danger to the community." Brief for Respondents in No. 99-7791, p. 24. But by definition the first justification--preventing flight--is weak or nonexistent where removal seems a remote possibility at best. As this Court said in *Jackson v. Indiana*, 406 U.S. 715, 92 S.Ct. 1845, 32 L.Ed.2d 435 (1972), where detention's goal is no longer practically attainable, detention no longer "bear[s][a] reasonable relation to the purpose for which the individual [was] committed." *Id.*, at 738, 92 S.Ct. 1845.

The second justification--protecting the community--does not necessarily diminish in force over time. But we have upheld preventive detention based on dangerousness only when limited to specially dangerous individuals and subject to strong procedural protections. Compare *Hendricks*, *supra*, at 368, 117 S.Ct. 2072 (upholding scheme that imposes detention upon "a small segment of particularly dangerous individuals" and provides "strict procedural safeguards"), and *Salerno*, *supra*, at 747, 750-752, 107 S.Ct. 2095 (in upholding pretrial detention, stressing "stringent time limitations," the fact that detention is reserved for the "most serious of crimes," the requirement of proof of dangerousness by clear and convincing evidence, and the presence of judicial safeguards), with *Foucha*, *supra*, at 81-83, 112 S.Ct. 1780 (striking down insanity-related detention system that placed burden on detainee to prove nondangerousness). In cases in which preventive detention is of potentially indefinite duration, we have also demanded that the dangerousness rationale be accompanied by some other special circumstance, such as mental illness, that helps to create the danger. See *Hendricks*, *supra*, at 358, 368, 117 S.Ct. 2072.

The civil confinement here at issue is not limited, but potentially permanent. Cf. *Salerno*, *supra*, at 747, 107 S.Ct. 2095 (noting that "maximum length of pretrial detention is limited" by "stringent" requirements); *Carlson v. Landon*, 342 U.S. 524, 545-546, 72 S.Ct. 525, 96 L.Ed. 547 (1952) (upholding temporary detention of alien during deportation proceeding while noting that "problem of ... unusual delay" was not present). The provision authorizing detention does not apply narrowly to "a small segment of particularly dangerous individuals," *Hendricks*, *supra*, at 368, 117 S.Ct. 2072, say, suspected terrorists, but broadly to aliens ordered removed for many and various reasons, including tourist visa violations. See 8 U.S.C. 1231(a)(6) (1994 ed., Supp. V) (referencing 1227(a)(1)(C)); cf. *Hendricks*, 521 U.S., at 357-358, 117 S.Ct. 2072 (only individuals with "past sexually violent behavior and a present mental condition that creates a likelihood of such conduct in the future" may be detained). And, once the flight risk justification evaporates, the only special circumstance present is the alien's removable status itself, which bears no relation to a detainee's dangerousness. Cf. *id.*, at 358, 117 S.Ct. 2072; *Foucha*, *supra*, at 82, 112 S.Ct. 1780.

Moreover, the sole procedural protections available to the alien are found in administrative proceedings, where the alien bears the burden of proving he is not

dangerous, without (in the Government's view) significant later judicial review. Compare 8 C.F.R. 241.4(d)(1) (2001) (imposing burden of proving nondangerousness upon alien) with *Foucha*, supra, at 82, 112 S.Ct. 1780 (striking down insanity-related detention for that very reason). This Court has suggested, however, that the Constitution may well preclude granting "an administrative body the unreviewable authority to make determinations implicating fundamental rights." *Superintendent, Mass. Correctional Institution at Walpole v. Hill*, 472 U.S. 445, 450, 105 S.Ct. 2768, 86 L.Ed.2d 356 (1985) (O'CONNOR, J.); see also *Crowell*, 285 U.S., at 87, 52 S.Ct. 285 (Brandeis, J., dissenting) ("[U]nder certain circumstances, the constitutional requirement of due process is a requirement of judicial process"). The Constitution demands greater procedural protection even for property. See *South Carolina v. Regan*, 465 U.S. 367, 393, 104 S.Ct. 1107, 79 L.Ed.2d 372 (1984) (O'CONNOR, J., concurring in judgment); *Phillips v. Commissioner*, 283 U.S. 589, 595-597, 51 S.Ct. 608, 75 L.Ed. 1289 (1931) (Brandeis, J.). The serious constitutional problem arising out of a statute that, in these circumstances, permits an indefinite, perhaps permanent, deprivation of human liberty without any such protection is obvious.

The Government argues that, from a constitutional perspective, alien status itself can justify indefinite detention, and points to *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 73 S.Ct. 625, 97 L.Ed. 956 (1953), as support. That case involved a once lawfully admitted alien who left the United States, returned after a trip abroad, was refused admission, and was left on Ellis Island, indefinitely detained there because the Government could not find another country to accept him. The Court held that Mezei's detention did not violate the Constitution. *Id.*, at 215-216, 73 S.Ct. 625.

Although *Mezei*, like the present cases, involves indefinite detention, it differs from the present cases in a critical respect. As the Court emphasized, the alien's extended departure from the United States required him to seek entry into this country once again. His presence on Ellis Island did not count as entry into the United States. Hence, he was "treated," for constitutional purposes, "as if stopped at the border." *Id.*, at 213, 215, 73 S.Ct. 625. And that made all the difference.

Document1zzHN\_B5 [5] The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law. See *Kaplan v. Tod*, 267 U.S. 228, 230, 45 S.Ct. 257, 69 L.Ed. 585 (1925) (despite nine years' presence in the United States, an "excluded" alien "was still in theory of law at the boundary line and had gained no foothold in the United States"); *Leng May Ma v. Barber*, 357 U.S. 185, 188-190, 78 S.Ct. 1072, 2 L.Ed.2d 1246 (1958) (alien "paroled" into the United States pending admissibility had not effected an "entry"). It is well established that certain constitutional protections available to persons inside the United States are unavailable to aliens outside of our geographic borders. See *United States v. Verdugo-Urquidez*, 494 U.S. 259, 269, 110 S.Ct. 1056, 108 L.Ed.2d 222 (1990) (Fifth Amendment's protections do not extend to aliens outside the territorial boundaries); *Johnson v. Eisentrager*, 339 U.S. 763, 784, 70 S.Ct. 936, 94 L.Ed. 1255 (1950) (same). But once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all "persons" within the United States, including aliens, whether their

presence here is lawful, unlawful, temporary, or permanent. See *Plyler v. Doe*, 457 U.S. 202, 210, 102 S.Ct. 2382, 72 L.Ed.2d 786 (1982); *Mathews v. Diaz*, 426 U.S. 67, 77, 96 S.Ct. 1883, 48 L.Ed.2d 478 (1976); *Kwong Hai Chew v. Colding*, 344 U.S. 590, 596-598, and n. 5, 73 S.Ct. 472, 97 L.Ed. 576 (1953); *Yick Wo v. Hopkins*, 118 U.S. 356, 369, 6 S.Ct. 1064, 30 L.Ed. 220 (1886); cf. *Mezei*, *supra*, at 212, 73 S.Ct. 625 ("[A]liens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law"). Indeed, this Court has held that the Due Process Clause protects an alien subject to a final order of deportation, see *Wong Wing v. United States*, 163 U.S. 228, 238, 16 S.Ct. 977, 41 L.Ed. 140 (1896), though the nature of that protection may vary depending upon status and circumstance, see *Landon v. Plasencia*, 459 U.S. 21, 32-34, 103 S.Ct. 321, 74 L.Ed.2d 21 (1982); *Johnson*, *supra*, at 770, 70 S.Ct. 936.

In *Wong Wing*, *supra*, the Court held unconstitutional a statute that imposed a year of hard labor upon aliens subject to a final deportation order. That case concerned substantive protections for aliens who had been ordered removed, not procedural protections for aliens whose removability was being determined. Cf. *post*, at 2505 (SCALIA, J., dissenting). The Court held that punitive measures could not be imposed upon aliens ordered removed because "all persons within the territory of the United States are entitled to the protection" of the Constitution. 163 U.S., at 238, 16 S.Ct. 977 (citing *Yick Wo*, *supra*, at 369, 6 S.Ct. 1064 (holding that equal protection guarantee applies to Chinese aliens)); see also *Witkovich*, 353 U.S., at 199, 201, 77 S.Ct. 779 (construing statute which applied to aliens ordered deported in order to avoid substantive constitutional problems). And contrary to Justice SCALIA's characterization, see *post*, at 2505-2507, in *Mezei* itself, both this Court's rejection of *Mezei*'s challenge to the procedures by which he was deemed excludable and its rejection of his challenge to continued detention rested upon a basic territorial distinction. See *Mezei*, *supra*, at 215, 73 S.Ct. 625 (holding that *Mezei*'s presence on Ellis Island was not "considered a landing" and did "not affect" his legal or constitutional status (internal quotation marks omitted)).

In light of this critical distinction between *Mezei* and the present cases, *Mezei* does not offer the Government significant support, and we need not consider the aliens' claim that subsequent developments have undermined *Mezei*'s legal authority. See Brief for Petitioner in No. 99-7791, p. 23; Brief for Respondent in No. 00-38, pp. 16-17; Brief for Lawyers' Committee for Human Rights as Amicus Curiae in No. 00-38, pp. 15-20. Nor are we aware of any other authority that would support Justice KENNEDY's limitation of due process protection for removable aliens to freedom from detention that is arbitrary or capricious. See *post*, at 2513-2515 (dissenting opinion).

The Government also looks for support to cases holding that Congress has "plenary power" to create immigration law, and that the Judicial Branch must defer to Executive and Legislative Branch decisionmaking in that area. Brief for Respondents in No. 99-7791, at 17, 20 (citing *Harisiades v. Shaughnessy*, 342 U.S. 580, 588-589, 72 S.Ct. 512, 96 L.Ed. 586 (1952)). But that power is subject to important constitutional limitations. See *INS v. Chadha*, 462 U.S. 919, 941-942, 103 S.Ct. 2764, 77 L.Ed.2d 317 (1983)

(Congress must choose "a constitutionally permissible means of implementing" that power); *The Chinese Exclusion Case*, 130 U.S. 581, 604, 9 S.Ct. 623, 32 L.Ed. 1068 (1889) (congressional authority limited "by the Constitution itself and considerations of public policy and justice which control, more or less, the conduct of all civilized nations"). In these cases, we focus upon those limitations. In doing so, we nowhere deny the right of Congress to remove aliens, to subject them to supervision with conditions when released from detention, or to incarcerate them where appropriate for violations of those conditions. See 8 U.S.C. 1231(a)(3) (1994 ed., Supp. V) (granting authority to Attorney General to prescribe regulations governing supervision of aliens not removed within 90 days); 1253 (imposing penalties for failure to comply with release conditions). The question before us is not one of " 'confer[ring] on those admitted the right to remain against the national will' " or " 'sufferance of aliens' " who should be removed. *Post*, at 2506 (SCALIA, J., dissenting) (emphasis deleted) (quoting *Mezei*, 345 U.S., at 222-223, 73 S.Ct. 625 (Jackson, J., dissenting)). Rather, the issue we address is whether aliens that the Government finds itself unable to remove are to be condemned to an indefinite term of imprisonment within the United States.

Nor do the cases before us require us to consider the political branches' authority to control entry into the United States. Hence we leave no "unprotected spot in the Nation's armor." *Kwong Hai Chew*, 344 U.S., at 602, 73 S.Ct. 472. Neither do we consider terrorism or other special circumstances where special arguments might be made for forms of preventive detention and for heightened deference to the judgments of the political branches with respect to matters of national security. The sole foreign policy consideration the Government mentions here is the concern lest courts interfere with "sensitive" repatriation negotiations. Brief for Respondents in No. 99-7791, at 21. But neither the Government nor the dissents explain how a habeas court's efforts to determine the likelihood of repatriation, if handled with appropriate sensitivity, could make a significant difference in this respect. See *infra*, at 2503-2504.

Finally, the Government argues that, whatever liberty interest the aliens possess, it is "greatly diminished" by their lack of a legal right to "liv[e] at large in this country." Brief for Respondents in No. 99-7791, at 47; see also *post*, at 2506 (SCALIA, J., dissenting) (characterizing right at issue as "right to release into this country"). The choice, however, is not between imprisonment and the alien "living at large." Brief for Respondents in No. 99-7791, at 47. It is between imprisonment and supervision under release conditions that may not be violated. See *supra*, at 2501 (citing 8 U.S.C. 1231(a)(3), 1253 (1994 ed., Supp. V)); 8 C.F.R. 241.5 (2001) (establishing conditions of release after removal period). And, for the reasons we have set forth, we believe that an alien's liberty interest is, at the least, strong enough to raise a serious question as to whether, irrespective of the procedures used, *cf. post*, at 2515-2517 (KENNEDY, J., dissenting), the Constitution permits detention that is indefinite and potentially permanent.

B

Despite this constitutional problem, if "Congress has made its intent" in the statute "clear, 'we must give effect to that intent.'" *Miller v. French*, 530 U.S. 327, 336, 120 S.Ct. 2246,

147 L.Ed.2d 326 (2000) (quoting *Sinclair Refining Co. v. Atkinson*, 370 U.S. 195, 215, 82 S.Ct. 1328, 8 L.Ed.2d 440 (1962)). We cannot find here, however, any clear indication of congressional intent to grant the Attorney General the power to hold indefinitely in confinement an alien ordered removed. And that is so whether protecting the community from dangerous aliens is a primary or (as we believe) secondary statutory purpose. Cf. *post*, at 2507, 2508-2509 (KENNEDY, J., dissenting). After all, the provision is part of a statute that has as its basic purpose effectuating an alien's removal. Why should we assume that Congress saw the alien's dangerousness as unrelated to this purpose?

The Government points to the statute's word "may." But while "may" suggests discretion, it does not necessarily suggest unlimited discretion. In that respect the word "may" is ambiguous. Indeed, if Congress had meant to authorize long-term detention of unremovable aliens, it certainly could have spoken in clearer terms. Cf. 8 U.S.C. 1537(b)(2)(C) (1994 ed., Supp. V) ("If no country is willing to receive" a terrorist alien ordered removed, "the Attorney General may, notwithstanding any other provision of law, retain the alien in custody" and must review the detention determination every six months).

The Government points to similar related statutes that require detention of criminal aliens during removal proceedings and the removal period, and argues that these show that mandatory detention is the rule while discretionary release is the narrow exception. See Brief for Petitioners in No. 00-38, at 26-28 (citing 8 U.S.C. 1226(c), 1231(a)(2)). But the statute before us applies not only to terrorists and criminals, but also to ordinary visa violators, see *supra*, at 2499; and, more importantly, post-removal-period detention, unlike detention pending a determination of removability or during the subsequent 90-day removal period, has no obvious termination point.

The Government also points to the statute's history. That history catalogs a series of changes, from an initial period (before 1952) when lower courts had interpreted statutory silence, Immigration Act of 1917, ch. 29, 19, 20, 39 Stat. 889, 890, to mean that deportation-related detention must end within a reasonable time, *Spector v. Landon*, 209 F.2d 481, 482 (C.A.9 1954) (collecting cases); *United States ex rel. Doukas v. Wiley*, 160 F.2d 92, 95 (C.A.7 1947); *United States ex rel. Ross v. Wallis*, 279 F. 401, 403-404 (C.A.2 1922), to a period (from the early 1950's through the late 1980's) when the statutes permitted, but did not require, post-deportation-order detention for up to six months, Immigration and Nationality Act of 1952, 242(c), 66 Stat. 210, 8 U.S.C. 1252(c), (d) (1982 ed.); *Witkovich*, 353 U.S., at 198, 77 S.Ct. 779, to more recent statutes that have at times mandated and at other times permitted the post-deportation-order detention of aliens falling into certain categories such as aggravated felons, Anti-Drug Abuse Act of 1988, 7343(a), 102 Stat. 4470, 8 U.S.C. 1252(a)(2) (mandating detention); Immigration Act of 1990, 504(a), 104 Stat. 5049-5050, 8 U.S.C. 1252(a)(2)(A), (B) (permitting release under certain circumstances); Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, 306(a)(4), 105 Stat. 1751, 8 U.S.C. 1252(a)(2)(B) (same).

In early 1996, Congress explicitly expanded the group of aliens subject to mandatory detention, eliminating provisions that permitted release of criminal aliens who had at one time been lawfully admitted to the United States. Antiterrorism and Effective Death Penalty Act of 1996, 439(c), 110 Stat. 1277. And later that year Congress enacted the present law, which liberalizes pre-existing law by shortening the removal period from six months to 90 days, mandates detention of certain criminal aliens during the removal proceedings and for the subsequent 90-day removal period, and adds the post-removal-period provision here at issue. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Div. C, 303, 305, 110 Stat. 3009-585, 3009-598 to 3009-599; 8 U.S.C. 1226(c), 1231(a) (1994 ed., Supp. V).

We have found nothing in the history of these statutes that clearly demonstrates a congressional intent to authorize indefinite, perhaps permanent, detention. Consequently, interpreting the statute to avoid a serious constitutional threat, we conclude that, once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute. See 1 E. Coke, Institutes \*70b ("Cessante razione legis cessat ipse lex") (the rationale of a legal rule no longer being applicable, that rule itself no longer applies).

#### IV

Document1zzHN\_B6 [6] The Government seems to argue that, even under our interpretation of the statute, a federal habeas court would have to accept the Government's view about whether the implicit statutory limitation is satisfied in a particular case, conducting little or no independent review of the matter. In our view, that is not so. Whether a set of particular circumstances amounts to detention within, or beyond, a period reasonably necessary to secure removal is determinative of whether the detention is, or is not, pursuant to statutory authority. The basic federal habeas corpus statute grants the federal courts authority to answer that question. See 28 U.S.C. 2241(c)(3) (granting courts authority to determine whether detention is "in violation of the ... laws ... of the United States"). In doing so the courts carry out what this Court has described as the "historic purpose of the writ," namely, "to relieve detention by executive authorities without judicial trial." *Brown v. Allen*, 344 U.S. 443, 533, 73 S.Ct. 397, 97 L.Ed. 469 (1953) (Jackson, J., concurring in result).

In answering that basic question, the habeas court must ask whether the detention in question exceeds a period reasonably necessary to secure removal. It should measure reasonableness primarily in terms of the statute's basic purpose, namely, assuring the alien's presence at the moment of removal. Thus, if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute. In that case, of course, the alien's release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances, and the alien may no doubt be returned to custody upon a violation of those conditions. See *supra*, at 2501 (citing 8 U.S.C. 1231(a)(3), 1253 (1994 ed., Supp. V); 8 C.F.R. 241.5 (2001)). And if removal is reasonably foreseeable, the habeas court should consider the risk of the alien's committing further crimes as a factor potentially justifying confinement within that reasonable removal period. See *supra*, at 2499.



We recognize, as the Government points out, that review must take appropriate account of the greater immigration-related expertise of the Executive Branch, of the serious administrative needs and concerns inherent in the necessarily extensive INS efforts to enforce this complex statute, and the Nation's need to "speak with one voice" in immigration matters. Brief for Respondents in No. 99-7791, at 19. But we believe that courts can take appropriate account of such matters without abdicating their legal responsibility to review the lawfulness of an alien's continued detention.

Ordinary principles of judicial review in this area recognize primary Executive Branch responsibility. They counsel judges to give expert agencies decisionmaking leeway in matters that invoke their expertise. See *Pension Benefit Guaranty Corporation v. LTV Corp.*, 496 U.S. 633, 651-652, 110 S.Ct. 2668, 110 L.Ed.2d 579 (1990). They recognize Executive Branch primacy in foreign policy matters. See *Container Corp. of America v. Franchise Tax Bd.*, 463 U.S. 159, 196, 103 S.Ct. 2933, 77 L.Ed.2d 545 (1983). And they consequently require courts to listen with care when the Government's foreign policy judgments, including, for example, the status of repatriation negotiations, are at issue, and to grant the Government appropriate leeway when its judgments rest upon foreign policy expertise.

Document1zzHN\_B7 [7] We realize that recognizing this necessary Executive leeway will often call for difficult judgments. In order to limit the occasions when courts will need to make them, we think it practically necessary to recognize some presumptively reasonable period of detention. We have adopted similar presumptions in other contexts to guide lower court determinations. See *Cheff v. Schnackenberg*, 384 U.S. 373, 379-380, 86 S.Ct. 1523, 16 L.Ed.2d 629 (1966) (plurality opinion) (adopting rule, based on definition of "petty offense" in United States Code, that right to jury trial extends to all cases in which sentence of six months or greater is imposed); *County of Riverside v. McLaughlin*, 500 U.S. 44, 56-58, 111 S.Ct. 1661, 114 L.Ed.2d 49 (1991) (O'CONNOR, J.) (adopting presumption, based on lower court estimate of time needed to process arrestee, that 48-hour delay in probable-cause hearing after arrest is reasonable, hence constitutionally permissible).

While an argument can be made for confining any presumption to 90 days, we doubt that when Congress shortened the removal period to 90 days in 1996 it believed that all reasonably foreseeable removals could be accomplished in that time. We do have reason to believe, however, that Congress previously doubted the constitutionality of detention for more than six months. See *Juris. Statement in United States v. Witkovich*, O.T.1956, No. 295, pp. 8-9. Consequently, for the sake of uniform administration in the federal courts, we recognize that period. After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing. And for detention to remain reasonable, as the period of prior postremoval confinement grows, what counts as the "reasonably foreseeable future" conversely would have to shrink. This 6-month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in

confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.

V

The Fifth Circuit held Zadvydas' continued detention lawful as long as "good faith efforts to effectuate ... deportation continue" and Zadvydas failed to show that deportation will prove "impossible." 185 F.3d, at 294, 297. But this standard would seem to require an alien seeking release to show the absence of any prospect of removal--no matter how unlikely or unforeseeable-- which demands more than our reading of the statute can bear. The Ninth Circuit held that the Government was required to release Ma from detention because there was no reasonable likelihood of his removal in the foreseeable future. 208 F.3d, at 831. But its conclusion may have rested solely upon the "absence" of an "extant or pending" repatriation agreement without giving due weight to the likelihood of successful future negotiations. See *id.*, at 831, and n. 30. Consequently, we vacate the judgments below and remand both cases for further proceedings consistent with this opinion.

It is so ordered.

Justice SCALIA, with whom Justice THOMAS joins, dissenting.

I join Part I of Justice KENNEDY's dissent, which establishes the Attorney General's clear statutory authority to detain criminal aliens with no specified time limit. I write separately because I do not believe that, as Justice KENNEDY suggests in Part II of his opinion, there may be some situations in which the courts can order release. I believe that in both *Zadvydas v. Davis*, No. 99-7791, and *Ashcroft v. Ma*, No. 00-38, a "careful description" of the substantive right claimed, *Reno v. Flores*, 507 U.S. 292, 302, 113 S.Ct. 1439, 123 L.Ed.2d 1 (1993), suffices categorically to refute its existence. A criminal alien under final order of removal who allegedly will not be accepted by any other country in the reasonably foreseeable future claims a constitutional right of supervised release into the United States. This claim can be repackaged as freedom from "physical restraint" or freedom from "indefinite detention," *ante*, at 2498, but it is at bottom a claimed right of release into this country by an individual who concededly has no legal right to be here. There is no such constitutional right.

Like a criminal alien under final order of removal, an inadmissible alien at the border has no right to be in the United States. *The Chinese Exclusion Case*, 130 U.S. 581, 603, 9 S.Ct. 623, 32 L.Ed. 1068 (1889). In *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 73 S.Ct. 625, 97 L.Ed. 956 (1953), we upheld potentially indefinite detention of such an inadmissible alien whom the Government was unable to return anywhere else. We said that "we [did] not think that respondent's continued exclusion deprives him of any statutory or constitutional right." *Id.*, at 215, 73 S.Ct. 625. While four Members of the Court thought that Mezei deserved greater procedural protections (the Attorney

General had refused to divulge any information as to why Mezei was being detained, id., at 209, 73 S.Ct. 625), no Justice asserted that Mezei had a substantive constitutional right to release into this country. And Justice Jackson's dissent, joined by Justice Frankfurter, affirmatively asserted the opposite, with no contradiction from the Court: "Due process does not invest any alien with a right to enter the United States, nor confer on those admitted the right to remain against the national will. Nothing in the Constitution requires admission or sufferance of aliens hostile to our scheme of government." Id., at 222-223, 73 S.Ct. 625 (emphasis added). Insofar as a claimed legal right to release into this country is concerned, an alien under final order of removal stands on an equal footing with an inadmissible alien at the threshold of entry: He has no such right.

## **Appendix 17-2 Sample G-166C**

[Sample G-166C](#)

## **Appendix 17-3 Sample Declaration**

Reserved

## **Appendix 17-4 Sample Affidavit**

Reserved

## **Appendix 18-1 Cuban Review Plan**

MARIEL CUBAN HISTORY

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B. Instructions for the Translator

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- A. Sample of Cuban Review Summary Sheet
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## MARIEL CUBAN ALIEN CRIMINAL CUSTODY WORKSHEET PROCESS

- A. Mariel Cuban Plan Flowchart
- B. Mariel Cuban Criminal Custody Worksheet Process
- C. Instructions for the Mariel Cuban Criminal Custody Worksheet
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## INSTRUCTIONS FOR BP-14 PACKAGES

- A. Instructions for BP-14 Packages
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## MENTAL HEALTH EVALUATION INFORMATION

- A. Case Assignment Criteria

## ABNORMAL PSYCHOLOGY

- A. Definitions from the Diagnostic and Statistical Manual of Mental Disorders

## HISTORY

### MARIEL CUBAN PROGRAM

Between April and October 1980, approximately 129,000 Cubans fled their nation in boats and arrived in Key West, Florida, during what became known as the freedom flotilla, or Mariel boatlift. The migrants were initially screened by the Immigration and Naturalization Service, and most were paroled into the United States to family members or other sponsors. Most of the Cubans that were paroled adjusted to Lawful Permanent Resident status after one year, under the Cuban-Refugee Adjustment Act (Pub. L. 89-732, Nov. 2, 1966).

During the initial INS interviews, it was determined that approximately 200 of Mariel Cubans had some type of criminal record in Cuba or history of mental illness. Many had been serving time in Cuban prisons or mental institutions and were offered the opportunity -- to join the boatlift. Those who were deemed by the INS to be a potential

danger to the community, or who had no sponsorship could not be repatriated to Cuba, because the Cuban government refused at that time to accept any "defectors" back into their country.

In response to this situation, in July 1981 the Attorney General initiated a status review plan, under which a member of the Department of Justice and an INS officer reviewed each detainee's file, conducted a personal interview if necessary, and made a recommendation to the Commissioner of the INS as to whether the alien should be paroled or detained. More than 2,000 detainees were paroled through this process between 1980 and 1984. In December 1984, the review plan was terminated after the Cuban government signed the Migration Agreement, agreeing to take back 2746 Cubans who were being held in INS custody at the time. From December 1984 to May 1985, 201 Mariel Cubans were returned to Cuba. The Migration Agreement was unilaterally suspended by Cuba in May 1985, in retaliation for the United States' initiation of Radio Marti broadcasts to Cuba. For the next 30 months, no Cubans were repatriated; approximately 600 were paroled into the community at the discretion of the INS district directors.

In June 1987, INS initiated the Cuban Review Plan, which permits INS to make initial determinations of parole for those Mariel Cubans in INS custody, when it is determined that their continued detention is not in the public interest. The process consists of a review of each detainee's file by two INS officers.

Those detainees not recommended for release based on the file review are given a personal interview by the officer at the detention facility. A final recommendation to parole or detain was made to the INS Associate Commissioner based on the officers' review. In November 1987, while the INS review plan was in effect, the Migration Agreement was reinstated, which meant that the United States could resume repatriations of those Cubans who were found to be excludable and whose names appeared on the list of 2746.

At the time of the reinstatement of the Migration Agreement, about 3,800 Mariel Cubans were housed in federal facilities in Atlanta, Georgia, and Oakdale, Louisiana. On November 21, 1987, many of those detainees seized hostages and took control over portions of these facilities. The disturbances were fueled in part by the erroneous assumption that all current detainees would be returned to Cuba immediately. Both the Atlanta and Oakdale facilities suffered extensive damage and could no longer be used to house the Cubans.

Pursuant to negotiations with the riot leaders to end the takeover and release hostages, the Attorney General agreed to place a moratorium on deportations to Cuba, and to create a Department of Justice panel process to review the case of each Mariel Cuban in custody at Atlanta and Oakdale prior to any final INS action concerning detention or repatriation. The DOJ review program was placed under the supervision of the Office of the Associate Attorney General (later re-delegated to the Office of the Deputy Attorney General, ODAG), and consisted of a file review by two Department of Justice attorneys and one

representative of the United States Community Relations Service. Those Cubans who did not appear on the list of 2746, who were in INS custody at the time of the riots, and who were ordered detained under the INS Cuban review plan, received a Department of Justice panel review to determine whether they would be paroled or detained. Those who did appear on the list of 2746, and who were recommended for repatriation by INS, received a DOJ review to determine if they would be repatriated or paroled. The DOJ review process took place between early 1988 and July 1991, and produced approximately 1600 final decisions.

In December 1990, the Attorney General issued a notice providing for the orderly conclusion of the DOJ panel process. The notice states that Mariel Cubans on the repatriation list who came into INS custody after December 6, 1990, would not be entitled to a DOJ repatriation panel review. The INS then reinstated the Cuban Review Plan, which permits INS to make determinations of parole for those Mariel Cubans in INS custody, when it is determined that their continued detention is not in the public interest. The process consists of a review of each detainee's file by two INS officers.

In addition to the repatriation reviews, the ODAG was responsible for coordination, oversight, and policy development with respect to the detention, repatriation, parole, placement, and medical treatment provided to the Cubans by the various federal program components: the INS, Bureau of Prisons, Public Health Service, and the Community Relations Service. The ODAG also served as a liaison between the program components and the representatives of the detainees. It received complaints made on behalf of the detainees, and initiated remedial action. For example, a longstanding concern raised by Cuban advocates and detention staff was the lack of detailed program information available to detainees. This problem was resolved by the production by the ODAG of an orientation booklet, printed in both Spanish and English, that was disseminated to detention facility staff and to all Cuban detainees entering INS custody. The ODAG was also responsible for communicating program information to agency heads, members of Congress, and representatives of detainees. Staff attorneys handled most of the operational details of the Departmental Cuban program. These duties include the aforementioned DOJ repatriation review and preparation of summaries, acting as DOJ liaison with program components, creating and maintaining databases in cooperation with the DOJ Office of Litigation Support to monitor cases through the repatriation process, generating program statistics, maintaining computer lists of Cubans in INS and state custody, responding to written and verbal communications from aliens, their representatives, and family members, creating and updating orientation materials, and responding to Congressional inquiries and preparing information for presentation at Congressional hearings.

In September 1990, a grant was awarded by INS and the National Institute of Corrections to Silbert and Associates, a consulting firm specializing in criminal justice issues, to assist in design and implementation of innovative strategies for the detention and parole of the Mariel Cuban population. In August 1992, after conducting surveys and consulting with Cuban program components, a draft Revised Cuban Review Plan was completed. It contained numerous recommendations for improving the INS parole process, including

the use of standardized scoring sheets to assist INS officers in making custody and parole decisions. Initial training of INS officers in the implementation of these procedures took place in October 1992. The draft plan also contained recommendations for improved placement and treatment strategies for those detainees who are paroled. Most of these recommendations were adopted by INS, and are currently in place.

## PROGRAM STATUS AND OBJECTIVES

The primary objective of the Mariel Cuban Program is to move as many Cuban offenders out of INS custody as possible, either through repatriation or parole, while minimizing danger to the community. The secondary objective is to insure humane and cost-effective detention and treatment of those who remain in custody, as well as fair, consistent, and timely application of the INS parole review process.

### Repatriations

Of the 2,746 repatriation-eligible Cubans, 1,625 have been returned to Cuba as of 3/11/2003. 201 were returned prior to the November 1987 disturbances, 648 pursuant to DOJ panel decisions, and 776 under ADAG "post-notice" review. Post-notice aliens eligible for repatriation are now entering INS custody at a rate of about 10 - 12 per month. These aliens are usually repatriated within 120 days of entering INS custody. Approximately 200 repatriation-eligible Cubans are currently in state and local prisons serving criminal sentences, awaiting transfer to INS custody. At the current rate, about 150 post-notice Cubans will be repatriated per year in the absence of a supplementary agreement with Cuba to expand the list of repatriation-eligible aliens.

All Cuban detainees not eligible for repatriation have been paroled at least once through the various INS and DOJ review programs since their arrival in 1980, many have returned to INS custody after committing crimes in the United States. Approximately 1,500 such Cubans are currently in INS custody.

## GUIDELINES FOR THE CUBAN REVIEW PLAN INTERVIEW

1. Establish identity of individual to be interviewed.
2. Introduce panel members, interpreter, and any Bureau of Prisons (BOP) or Immigration and Naturalization Service (INS) Headquarters, HQDRO, personnel that may be present. Should there be visitors from the BOP and/or HQDRO or BOP, the detainee should be queried as to whether he has any objections to them being present during the interview. If the detainee should object, these visitors should be excluded, with the exception being HQDRO Cuban Review Plan personnel who will be conducting on-site training.
3. The role of the interpreter/translator should be carefully explained. The detainee should be advised that the interpreter is present solely for the convenience of the

detainee. The interpreter should be advised not to establish any independent relationship with the detainee, nor to attempt to function in any sort of advisory capacity.

4. Establish that detainee is informed of the interview with the requisite 21-day advance notification.
5. Establish whether detainee has an attorney or legal representative who will be present during the interview. In addition, ascertain whether family members are present as well. It should be emphasized to the detainee as well as his/her attorney/legal representative and family member(s) that what will take place is an INTERVIEW, not a hearing. Advise the attorney/legal representative and family members that they will have an opportunity at the conclusion of the interview to make a statement on behalf of the detainee. Once it has been determined that the detainee wishes to proceed with the interview without his attorney being present (or if he does not have an attorney), it must be noted in the space provided the following notation: Detainee Wishes to Proceed Without Legal Representation.
6. In order to ensure that the detainee understands the Cuban Review Plan procedure, a general introduction such as the following may be useful: We will be talking about a number of things and at the end of the interview we will give you as well as others present an opportunity to tell us anything additional you might want us to know. Do you understand why you are here today? It is also important to advise the detainee of the importance in being truthful in his/her responses. He/she should be advised that the responses given will be compared to information already available through INS and BOP records.
7. Both panel members must actively engage in the questioning, although one panel member may begin the inquiry or make the introductions and provide the necessary procedural information. Listen to the questions that are asked by the other panel member as well as the responses provided by the detainee. It is important to stress to the detainee that your questions regarding past criminal history, substance abuse problems, institutional behavior, etc., are all directly relevant to the interview process.

If this is the detainee's first interview, then the interview should be detailed and should elicit a comprehensive summary of his/her criminal and personal history. The detainee should first be questioned regarding any criminal record he/she may have in Cuba, and the offenses and the circumstances involved. He/she should then be questioned regarding placement subsequent to his/her arrival to the United States, place of residence, employment history, etc. At this point, he/she should be questioned in regard to his/her criminal record in the United States. Institutional history should then be explored, and any infractions or participation in programs, classes, etc. should also be discussed. The detainee should be afforded a full opportunity to respond to and explain the circumstances associated with any disciplinary report he/she may have received. At this point, the interview should center on the detainee's release plans. Is there a sponsor? How does he/she know this sponsor? How often does he/she communicate with this sponsor? What job offers are available? What was the job he/she held the longest in the



community? How will he/she avoid contact with those people who may have gotten him into trouble in the past? The detainee should be asked at this point if he/she would like to make a statement, and, if present, whether or not the legal representative/attorney and/or family member/sponsor wishes to make a statement in the detainee's behalf. At the conclusion of the interview, the panel members should explain to the detainee that they will be making a recommendation to HQDDP, the Cuban review Plan Unit, and he/she will personally be notified of their decision within eight (8) to ten (10) weeks. Lastly, the detainee should be reminded of the importance of maintaining good institutional behavior pending receipt of a decision from Headquarters.

If the detainee has previously appeared before a Cuban Review Panel, the interview should focus primarily on the events which have occurred since the date of that interview. The exception would be where the criminal history reflects a pattern of conduct, which may affect his/her readiness for parole. In those instances where the detainee has been a parole violator or where there has been halfway house breakdown, circumstances surrounding the violation or breakdown should be extensively addressed, and the panel should assess whether the detainee has gained an understanding on why he/she either violated his/her parole or what transpired for him/her to breakdown at the halfway house. The remainder of the interview should focus upon that which is discussed above: sponsor information, employment opportunities, closing statements, etc.

8. According to INS regulations, it is the detainee who bears the burden of convincing the panel that he should be paroled. A decision to recommend release or continue detention is based upon the following four (4) factors:

- a) That the individual IS OR IS NOT presently nonviolent.
- b) That the individual IS OR IS NOT likely to remain nonviolent.
- c) That the individual IS OR IS NOT likely to pose a threat to the community following his/her release.
- d) That the individual IS OR IS NOT likely to violate the conditions of his/her parole.

The panel's recommendations should logically derive from applying the information gathered at the interview to the criteria above. In those cases in which the panel would have recommended parole had additional information been available, this should be written clearly on the Cuban Review Summary sheet so that the HQDRO can attempt to obtain the missing information/documentation. In instances where the panel would have recommended release if the detainee were treated at St. Elizabeth's Hospital or engaged in a substance abuse program prior to release, the panel members CAN recommend release contingent upon his/her receiving the necessary inpatient treatment. In these cases it is imperative, however, that the panel members include this stipulation in the "Justification of Panel Recommendation" segment of the Cuban Review Summary Sheet.

For all cases, the preference in release designation is for the individual to be released to a family sponsor. It is also preferred that the potential sponsor be a member of the family, immediate or extended, but in some cases release to a friend will be considered and approved. These cases generally occur when the individual has no family, or where the family is not willing to serve as a sponsor.

Although the preference is for family/sponsor release, extenuating circumstances may exist that preclude an individual from being released in this manner. For example, a Mariel Cuban alien may have been released previously to a family member/sponsor, and subsequent to his/her release may have had his/her parole revoked due to criminal misconduct. In addition, his/her criminal history may be such that direct sponsorship would be ill advised, in that the record reflects a tendency to engage in assaultive, violent behavior and/or recidivist tendencies. In this case, release to a halfway house would in all probability be more appropriate.

Effective on or about October 1994, the funding previously given to the Community Relations Service (CRS) and the Public Health Service (PHS) was given directly to the Bureau of Prisons (BOP). Accordingly, Headquarters BOP Detention Services Branch now makes the designation into BOP-contracted halfway houses. It should be noted that unlike past practice where CRS and United States Catholic Charities (USCC) would purchase requisite tickets for those individuals placed into either a CRS halfway house or via USCC assistance, the purchasing of tickets became a BOP Detention and Removal (D&R) responsibility.

The BOPs D&R Division assumes responsibility for scheduling, transferring, and placement of an individual into his/her halfway house program. In order to ensure that the transfer is effected with a minimum of confusion, the contact point for the halfway house (the name & phone number is noted on the memorandum that is forwarded to the point-of-contact for each individual designated into a BOP-halfway house) should be notified that the individual will be arriving on the scheduled date. Should the designated transfer date not be practical due to staffing, scheduling, or funding issues, the contact point at the halfway house should be advised of the date the individual will be transferred.

In those instances where substance abuse is identified as a major factor in an individual's criminal history, that individual will be designated to the Cuban Drug Abuse Program (CDAP) currently at the Federal Correctional Institute (FCI) in Englewood, Colorado. Similar cases housed in Service facilities or Service contracted facilities will be referred to FCI Englewood as well. Should that not prove practical, such cases will be designated for placement into Riverside Houses substance abuse program in Miami, Florida.

Individuals whose release is conditioned upon the receipt of necessary psychiatric treatment, based on the nature of the criminal record, will be designated for placement into Western Care Centers Inc., of Chino, California. It is important to note that this is the ONLY halfway house that specializes in this type of individual, and bed space is severely limited.

It is important to remember that all cases placed into CRS/BOP, PHS/BOP, or BOP halfway houses from either BOP institutions or INS contract/INS-operated facilities will be referred to BOP for designation into a BOP institution in the event of subsequent halfway house breakdown. In all instances however, the circumstances surrounding the breakdown MUST INITIALLY be forwarded to the Cuban Review Unit at Headquarters (HQDRO) in order to ascertain whether the circumstances surrounding the breakdown warrant parole revocation. NO action should be taken PRIOR to receiving authorization from HQDRO that parole has in fact been revoked.

#### INSTRUCTIONS FOR THE TRANSLATOR

1. Before starting the actual interview, the detainee should be identified in the Spanish language, as to his/her name, date of birth, register number (BOP or A#) and be given a brief explanation of the Panel's purpose and procedures. After this is accomplished, the translator should tell the Panel members that the detainee has been identified. Should there be any discrepancies regarding name, date of birth or register number, the Panel members should be made aware of them so that they can record them.
2. Always use the first person when translating the detainee's answers, i.e., do not interpret by saying: "He says or he said he was born in Santiago de Cuba." The correct way is: "I was born in Santiago de Cuba."
3. Use consecutive translation, not simultaneous. Do not summarize, your translation should be verbatim to the extent possible. If the detainee speaks too fast, set your own pace by telling him/her when to pause so you can translate as accurately as possible.
4. At the conclusion of the interview, the detainee should be informed that the panel members will make a recommendation, not a decision, to the Associate Commissioner for Enforcement, and that the detainee will be notified of the Associate Commissioner's decision in the period of eight to ten weeks.
5. Remember that you play a very important role in these proceedings and that your confidentiality and tact are also very important. Never get personally involved with detainees or their particular cases, and since you do not participate in the recommendation to release or detain, you are not to express your personal opinion about any of the cases. If a detainee asks you what you think of his/her particular case or how you think the interview went, you should always reply that you do not know. Always adhere to these rules.

#### REPRESENTATION DURING PANEL REVIEW

The Mariel Cuban detainee may be accompanied by representation at no expense to the government during the review process. See Form I-784 and 8 C.F.R. 212.12(d)(4)(ii).

The representative may be an attorney, a family member, a designated representative, or any person of the detainees choosing EXCEPT Department of Justice employees, or other inmates or detainees.

It is the responsibility of the detainee to notify his/her representative of the date and time of the interview. If the representative fails to appear, the interview will commence without the representative. If there is valid reason to believe that the representative is merely tardy, and will arrive soon, the Panel may postpone the interview at its discretion for a short period of time.

The Coalition to Support Cuban Detainees (CSCD) is actively involved in the representation of the Mariel Cuban detainees. CSCD is notified by Headquarters DRO (and in some cases by the liaison officers) concerning cases in which they have interest. CSCD is also notified in all cases in which the detainee has NOT designated a specific representative of choice, but has expressed a desire to be represented.

Some detainees will wish to have both an attorney/representative and a family member or friend participate in the interview. When this occurs, for security reasons, it is the policy to have only the attorney/representative present for the interview. When the interview is completed, but before the detainee leaves the interview room, the family member/friend is then invited into the interview room to make a statement and/or present documentation on behalf of the detainee. As the interview will have the two panel members, the translator, the detainee and a representative present, and possibly a detention officer, it is in the interest of all parties not to have any additional persons present during the interview.

It is important to document on the Interview Summary Sheet who was involved in the interview. The representative's name, title, mailing address and telephone number must be written on the Form I-790. If there is a family member or friend in addition to the representative, it should be noted on the I-790. Note the name, address, and relationship of the friend or family member, and a statement that this person appeared at the end of the interview on behalf of the detainee and was not present in the interview room during the actual interview.

U.S. Department of Justice

Office of the Associate: Attorney General

The Associate Attorney General

Washington, D.C 20530

To: Clair Cripe, General Counsel

Bureau of Prisons

To: John Simon  
Deputy Assistant Commissioner  
Detention and Deportation  
Immigration and Naturalization Service

From: George C. Calhoun, Director  
Mariel Cuban Review Programs

Subject: Sanitation of files for Cuban Review Programs

Attached is the final version of a memorandum providing new instructions regarding the sanitation process. It is the product of deliberations among all concerned components. Please insure that all persons who work in this process receive a copy as soon as possible.

You are free to insert the name and number of a contact person within your organization in the space provided on the last page.

Thank you for your cooperation.

CC:

Lauri Filppu

Harlon Penn

John Hurley

**SPECIAL INSTRUCTIONS REGARDING INFORMATION AVAILABILITY TO  
MARIEL CUBANS AND THEIR REPRESENTATIVES IN THE PAROLE AND  
REPATRIATION PROGRAMS.**

This Notice revises the procedure to be used in making information available to Cuban detainees and their representatives or attorneys under the Cuban Repatriation and Cuban Parole Review Programs.

It is the policy of these programs to grant access to all information in every detainee's file to that detainee and his/her representative, and to the review panels, with the exception of the narrow circumstances described in paragraph 3 below. The availability of records under these programs is not governed by either the Freedom of Information Act (FOIA) or the Privacy Act (PA); their provisions play no role in making determinations concerning the availability of records. All information is to be made available unless

withholding is authorized by paragraph 3 of the Information Availability Policy below. There are no exceptions. This policy is extremely important because information which is not made available to detainees and their representatives, will also be withheld from the review panels.

The INS officer releasing the records shall place in the file a list of all documents not released pursuant to this directive as well as the date on which they were retained.

This notification supersedes all INS wires sent to INS officers regarding the availability of information in parole and repatriation programs. Records, including records from third party agencies, will be released unless there is a specific prohibition set forth in the following paragraphs.

#### Information Availability Policy

1. Only individuals and organizations entitled to represent aliens under 8 C.F.R. Part 292 are entitled to review files of Mariel Cubans in either the repatriation or parole review program. They are only entitled to review information regarding a particular Mariel Cuban after they have filed a G-28 Notice of Representation with the INS. In addition, the G-29 must also be signed by the alien prior to the release of any Public Health Service information. Paralegals who are supervised by attorneys or authorized representatives are also entitled to review files as long as they have written permission from their supervisors. Such letters of permission shall be included next to the G-28 in the alien's A-file.
2. Record information should be provided to representatives in a timely fashion. At a minimum, it should be made available within five days prior to any oral interview where the representative is to be present.
3. Withholding of records. With certain very limited exceptions, it is the policy of these programs never to withhold information from Mariel Cubans and their representatives and, as a result, from departmental review panels. The rationale for this policy is that any document or item that is removed from a file or sanitized will not be reviewed by persons charged with the responsibility for determining whether a detainee should be deported, detained, or released into the United States. As stated above, neither the FOIA nor the PA is applicable to withholding decisions under these provisions.

It is crucial that all information bearing on whether it is in the public interest (i.e. consistent with public safety) to deport or release a detainee be made available for the decision-maker to review. For example, if information concerning a detainee's criminal activities is sanitized, the Departmental review panels will not be aware of these activities when they decide whether to deport or release the detainee. Thus, the policy is to insure that the departmental review panels receive all information that is significant in their developing a fair, accurate, and complete picture of the detainee. As indicated above, the panels will not receive information that is withheld from the detainee and his/her representative.

FOIA exemptions do not apply to the sanitation of files relating to a Mariel Cuban detainee because there are no public releases of records involved in this program. Instead, there are only three highly limited exceptions to the policy that no information should be sanitized. The three circumstances under which material should be sanitized are as follows:

- (i) Information which would reveal the identity of a person identified as a confidential source;
- (ii) The names of FBI Special Agents designated as such in FBI investigative reports. Special agents will be referred to either by the term "Special Agent" or the initials "SA".
- (iii) A document that specifically states it should not be released because the release of the information therein would adversely affect an ongoing investigation.

In no instance should you withhold an entire record because of the need to protect some portion(s) of that record. Deletion should be aimed only at that portion of the record to be withheld. For example, take out a person's name when it should be deleted, but do not remove the page from the file. Thus in general, the only types of information you should delete from such records are those reports e.g., FBI 302's, and reports from other agencies (including state and local law enforcement agencies) that fall within the three highly limited exceptions. The rest of the records must be released.

Be aware that documents generally appear throughout an alien's files in at least duplicate or triplicate. Thus, any deletion or withholding of documents should extend to all copies within the files.

4. In view of the fact that no public releases of records are involved in this program (i.e., because the records remain in the custody of government officials at all times, and because no one is allowed to make copies), you should not view the granting of access to a detainee and his representative as violating any general limitations on disclosure found on records from state and local law enforcement agencies. Thus you should not remove from files any state or local law enforcement documents which state, on their face, that no further disclosure should occur. Remember, the unnecessary withholding of information may lead to a decision to parole, detain or repatriate based on inaccurate and/or incomplete information, and which could potentially cause harm to the general public.

If you have any questions regarding the above policy or possible prohibition against release of any of the document files, please contact the District Counsel first.

#### SPECIAL NOTES:

G-28: submitted by representative before interview?

Did the detainee have 21 calendar days advance notice during which to obtain/notify counsel (see form 1-78)?

The attorney/representative is at the interview to advise the detainee. He/she may not answer questions for the detainee.

The attorney/representative shall be invited to give a summary statement at the end of the interview.

The attorney/representative is entitled to review the sanitized file in advance of the interview (but should schedule the file review so as not to delay the scheduled interview).

This is an administrative interview, not a hearing. Never refer to the interview as a hearing. The attorney or representative cannot "object" as in a court proceeding.

The detainee and/or his/her family members may become emotional during the interview. Please use your professional courtesy and diplomacy, but do not allow histrionics or physical exchanges.

DO NOT INDICATE YOUR PROPOSED RECOMMENDATION IN ANY WAY to the detainee, his/her representative, his/her family, or to any non-INS personnel.

#### SAMPLE CUBAN REVIEW PLAN SUMMARY SHEET

DETAINEE

NAME: \_\_\_\_\_  
\_\_\_\_\_

INS A NUMBER: \_\_\_\_\_ BOP REGISTRATION  
NUMBER \_\_\_\_\_

DATE OF  
BIRTH: \_\_\_\_\_ DPOE: \_\_\_\_\_

LOCATION OF  
INTERVIEW: \_\_\_\_\_  
\_\_\_\_\_

DATE OF FILE  
REVIEW: \_\_\_\_\_ INTERVIEW: \_\_\_\_\_  
\_\_\_\_\_

DATE TO INS  
CUSTODY: \_\_\_\_\_  
\_\_\_\_\_



PANEL MEMBERS:

#1 \_\_\_\_\_

#2 \_\_\_\_\_

TRANSLATOR: \_\_\_\_\_  
\_\_\_\_\_

REPRESENTATIVE/ ATTORNEY:      G-28 FILED?      Y      N

NAME: \_\_\_\_\_  
\_\_\_\_\_

ADDRESS  
(MAILING): \_\_\_\_\_  
\_\_\_\_\_

TELEPHONE  
NUMBER(S): \_\_\_\_\_

EXCLUSION PROCEEDINGS

CHARGES:              SECTION 212 (a) (\_\_\_), (\_\_\_), (\_\_\_)      (LIST ALL)

\_\_\_\_\_ Under Final Order Dated \_\_\_\_\_ by \_\_\_\_\_ EOIR \_\_\_\_\_  
BIA \_\_\_\_\_ Other

\_\_\_\_\_ Under Proceedings at \_\_\_\_\_ (EOIR) Court of  
Jurisdiction

I-110/I-122 issued on (date) \_\_\_\_\_

Detainee has the following applications pending before the  
Service: \_\_\_\_\_  
\_\_\_\_\_

CRIMINAL HISTORY

IN CUBA:

IN U.S.A.:

INSTITUTIONAL RECORD (DISCIPLINARY INCIDENTS, PARTICIPATION IN REHABILITATION PROGRAMS, ETC.)

OTHER FACTORS CONSIDERED OR DEVELOPED IN THIS REVIEW

A U.S. Public Health Service mental health evaluation was/was not (circle one) available to this panel. (If available, date of that evaluation: \_\_\_\_\_).

Other information and/or documents presented to or available to this panel for consideration in his review and recommendation: (Please include employment history/experience in this section)

DISCUSSION AT INTERVIEW

IF MORE SPACE NEEDED FOR ANY PART OF THIS REVIEW, PLEASE CONTINUE ON A SEPARATE SHEET OF PAPER.

PANEL PERCEPTIONS AND RECOMMENDATIONS

THE PANEL FOUND THE DETAINEE CREDIBLE \_\_\_\_\_ NOT CREDIBLE \_\_\_\_\_

BECAUSE:

THE PANEL WAS UNABLE TO CONCLUDE FROM THIS REVIEW THAT THE DETAINEE IS: (CHECK ALL APPROPRIATE BOXES BELOW; DO NOT MARK ANY BOXES BELOW IF YOU ARE RECOMMENDING RELEASE ON PAROLE.)

\_\_\_\_\_ PRESENTLY NON-VIOLENT.

\_\_\_\_\_ LIKELY TO REMAIN NON-VIOLENT.

\_\_\_\_\_ NOT LIKELY TO POSE A THREAT TO THE COMMUNITY FOLLOWING HIS RELEASE.

\_\_\_\_\_ NOT LIKELY TO VIOLATE THE CONDITIONS OF HIS PAROL

JUSTIFICATION OF PANEL RECOMMENDATION

PANEL MEMBER

#1: \_\_\_\_\_ DATE: \_\_\_\_\_

CIRCLE ONE

RELEASE/PAROLE

DETAIN

PANEL MEMBER

#2: \_\_\_\_\_ DATE: \_\_\_\_\_

CIRCLE ONE

RELEASE/PAROLE

DETAIN

POTENTIAL SPONSOR INFORMATION

ATTACHMENTS, IF ANY

INSTRUCTIONS FOR PANEL MEMBERS

1. **DETAINEE NAME:** Whenever possible, please provide first, middle, and both last names.
2. **INS A #:** Please provide any/all known INS file numbers.
3. **BOP REG #:** Please provide any/all known BOP numbers.
4. **DATE OF BIRTH:** Please provide any/all known dates of birth.
5. **DPOE:** Please indicate the date and location of the LAST arrival to the United States.
6. **LOCATION OF INTERVIEW:** Please provide the location of the Cuban Review Plan interview and in parenthesis the INS office having jurisdiction.
7. **DATE OF THE FILE REVIEW:** Kindly indicate the date file was reviewed in preparation for this interview.
8. **INTERVIEW:** Please provide the date of the Cuban Review Plan interview.
9. **DATE OF INS CUSTODY:** Please provide the date in which INS most recently assumed the custody of the Mariel Cuban alien. **DO NOT** provide the date this detainee was transferred to his present place of confinement. Since this information is very important, it **SHOULD NOT** be left blank.
10. **PANEL MEMBERS:** Kindly provide the first and last names of the panel members.
11. **Translator:** Please provide the first and last name of the translator.
12. **REPRESENTATIVE:** Please indicate whether or not the designated representative has filed Form G-28 in behalf of the detainee by circling Y for yes and N for no. Please provide his/her full name, mailing address, and complete telephone number.
13. In cases where the INS detainee is unrepresented, he/she, prior to the commencement of the Cuban Review Plan interview, should be asked if he/she wishes to have an attorney and/or representative present.

If the Mariel Cuban alien indicates that he/she "wishes to proceed without representation," it should be noted on this portion of the Cuban Review Plan Summary Sheet. If legal representation is requested and not immediately available, the interview should be terminated and the Mariel Cuban alien advised that he/she will be scheduled for another Cuban Review Plan interview at the earliest possible convenience.

14. **EXCLUSION PROCEEDINGS:** Indicate whether or not charging documents have been issued and list the corresponding section(s) of law cited in the charging documents. Please, to the best of your ability, review the file and ascertain whether a final order of exclusion and deportation has been issued in the case. If there is no evidence of a final order check the space "Under Proceedings..." and indicate the court presently having jurisdiction over this matter. The date the charging documents were issued should also be noted.

If there is also any evidence of an applications(s) being filed for/by the INS detainee, please note the type of application as well as the date and place of its submission. If there are none in their record, please write "none".

14. **CRIMINAL HISTORY:** Note the criminal offenses for which the Mariel Cuban alien was convicted. Their date, location and disposition **MUST** also be provided.

Although it is preferable to list only arrests resulting in conviction on this portion of the Cuban Review Plan Summary Sheet, the panel members may, at their option, list the nature of other arrest in cases where extensive arrest records are in existence. It is not necessary, however, to record the date, location, and, obviously, dispositions of these actions.

If the "Criminal Record" was **CORRECTLY** noted during a previous Cuban Review Plan interview, the panel members may refer Headquarters personnel to the Cuban Review Plan Summary Sheet. "Criminal record as stated by the previous Cuban Review Panel interview of (date) verified and considered accurate." **DO NOT**, however, refer to a corresponding NCIC report or submit corresponding attachment(s).

15. **INSTITUTIONAL RECORD:** List all disciplinary incidents in local, state, and/or federal custody as well as their corresponding dispositions. Positive efforts toward institutional rehabilitation such as correspondence courses, English language, and job training, should also be provided in this segment of the Cuban Review Plan Summary Sheet.

If the institutional record of the INS detainee was **CORRECTLY** noted on a previous Cuban Review Plan Summary Sheet, it is acceptable for the panel members to list only institutional behavior, both positive and negative, since the date of that interview.

If, at the time of the Cuban Review Plan interview, an updated progress report is provided by the local, state, and/or Federal authorities, this documentation should accompany the Cuban Review Plan Summary Sheet upon its submission to Headquarters.

All other documentation, e.g., certificates of completion, disciplinary reports, however, should only be noted on this portion of the Cuban Review Plan Summary Sheet.

16. **OTHER FACTORS CONSIDERED OR DEVELOPED DURING THIS INTERVIEW:** Unless this Mariel Cuban alien has never previously appeared for an interview before a Cuban Review Panel, a U.S. Public Health Service Mental Health Evaluation will, in all likelihood, be in the INS A-file. Kindly note the date of the most recent evaluation.

Information pertaining to documentation submitted by the Mariel Cuban alien during the course of the Cuban Review Plan interview should also be included on this portion of the Cuban Review Plan Summary Sheet. Please note, however, the "Institutional Record" and "Potential Sponsorship" information should be noted on the appropriate sections of the Cuban Review Plan Summary Sheet.

17. **DISCUSSION AT INTERVIEW:** It is extremely important that a clear and succinct synopsis be provided. Please note **WHAT WAS SAID** by the Mariel Cuban alien during the course of the Cuban Review Plan interview. Do not interject your personal opinions.

Inmate accounts of violent criminal and institutional activity must be documented. If there is evidence of recent institutional misconduct, especially within the past year, the Mariel Cuban alien's explanation for this behavior must be provided.

Cases of Mariel Cuban aliens who have not previously appeared for an interview before a Cuban Review Panel generally require the most detail in that an extensive chronological synopsis of the detainee's history should be provided. The panel members **MUST** address the inmate's experiences in Cuba, placement as well as employment history in the United States, criminal history, institutional behavior, and plans for future release.

In instances where the Mariel Cuban alien has previously appeared for an interview before a Cuban Review Panel and has subsequently been ordered continued detention by the Associate Commissioner for Enforcement, it is not necessary to provide an extensive chronological summation of the inmate's criminal and institutional history. A few issues should be selected and extensively addressed during the course of the Cuban Review Plan interview. Primary areas of concern generally include, but are not limited to, recent institutional adjustment, inmate accounts of violent criminal and institutional misconduct, and plans for future release.

Some INS detainees will have been previously interviewed by a Cuban Review Panel and as a result, subsequently paroled from INS custody. Parole will have been revoked because of their failure to abide by the rules and regulations of a halfway house program and/or participation in some form of criminal activity. In these instances, the panel members **MUST** document, exclusively and in detail, the Mariel Cuban alien's activities since the date of his/her most recent release from INS custody.

In a few instances, the Mariel Cuban alien will have been granted approval for release on parole by the Associate Commissioner for Enforcement and, prior to being physically released from INS custody, engaged in institutional misconduct which subsequently resulted in the withdrawal of the "release" decision. In these situations, the panel members MUST document, exclusively and in detail, the Mariel Cuban alien's account(s) of the incident(s), which predicated this release withdrawal.

Please remember to be specific. Avoid the use of vague and generalizing statements. Other than the cases of those INS detainees who refuse to appear for the Cuban Review Plan interview, two-sentence narratives are totally unacceptable.

18. **PANEL PERCEPTIONS AND RECOMMENDATIONS:** Specify as to whether or not you found the INS detainee to be truthful and state why you found him/her to be credible or not credible. If the panel is recommending continued detention, then one or more of the four boxes should be checked. Please DO NOT check any of these boxes if a release recommendation is being entered.

19. **JUSTIFICATION OF PANEL RECOMMENDATION:** The inmate's propensity towards violent as well as recidivistic criminal and institutional misconduct should be weighed against his/her efforts to maintain good institutional behavior and participate in any/all educational as well as vocational rehabilitation programs.

The panel members should always bear in mind that insufficient language, reading, and writing skills, inappropriate sponsorship, as well as lack of prospective employment opportunities, by themselves, do not justify entering a continued detention recommendation. Halfway house programs are presently in existence for those Mariel Cuban aliens lacking proper sponsorship and/or viable family support. Public Health Service halfway house programs are available for Mariel Cuban aliens with mental disorders. Inpatient substance abuse programs are readily accessible for those individuals with a history of alcohol and/or drug addiction.

A continued detention recommendation MUST, however, be entered if the panel members, on the basis of their review, are unable to conclude that the Mariel Cuban alien is presently nonviolent, likely to remain nonviolent, unlikely to violate the conditions of his/her parole, and MOST IMPORTANTLY, pose a threat to the community following his/her release from custody.

20. **RECOMMENDATIONS AND SIGNATURES OF PANEL MEMBERS:** After circling the appropriate recommendation, each panel member should sign and date the form.

21. **POTENTIAL SPONSORSHIP INFORMATION:** List the COMPLETE AND CORRECT names, addresses, and telephone numbers of prospective sponsors and/or family members. Please indicate the relationship, if any, to the detainee and what type of support is being offered, i.e. housing, employment. If there is no visible means of support

indicate whether or not placement in a halfway house program is acceptable. DO NOT leave this segment of the Cuban Review Plan Summary Sheet blank.

22. ATTACHMENTS, IF ANY: If, at the time of Cuban Review Plan interview, an updated progress report is provided by the local, state, or federal authorities, it should accompany the Cuban Review Plan Sheet upon its submission to Headquarters. Otherwise, all other information should be documented on the corresponding segment of the Cuban Review Plan Summary Sheet.

Maribel Cuban Plan Flowchart

To View the [Flowchart Click Here](#)

#### MARIBEL CUBAN CRIMINAL CUSTODY WORKSHEET PROCESS

SCORING THE CUBAN CRIMINAL CUSTODY WORKSHEET: Each Detention and Removal Division that processes Maribel Cuban aliens will designate a Maribel Cuban liaison officer as well as a backup to handle the duties and responsibilities that pertain to these inmates. Their names and corresponding telephone numbers will be forwarded to Robert Matthey, HQDRO, (202) 514-1958.

These liaison officers, upon receiving notification that a Maribel Cuban alien will finish his/her sentence within the next calendar year will prepare a Maribel Cuban Criminal Custody Worksheet and a BP-14 package for the detainee. If advance notification has not been provided and the alien is already in INS custody, these liaison officers will prepare the document immediately upon receipt of the corresponding A-file.

Documentation for those Maribel Cuban aliens serving sentences in BOP facilities should be forwarded to the local INS liaison officer for inclusion in the corresponding INS A-file and grading under the Maribel Cuban Criminal Custody Worksheet.

RELEASE/DETAIN DETERMINATION: The decision to detain or release a Maribel Cuban is made by the designate of the Associate Commissioner for Enforcement. Regardless of whether the recommendation is to release or detain, liaison officers should include with the worksheet all information relative to his/her criminal as well as institutional record. Please note that it is essential that in those cases where medical circumstances would warrant a release consideration despite a score in excess of seven (7), documentation pertaining to said medical condition MUST be included as well. After a decision is made at HQDRO a copy of the signed Maribel Cuban Criminal Worksheet will be returned to the originating officer either by fax or by mail for placement in the A-file. The district then may either detain or release the alien as the form indicates.

#### SCHEDULING OF CUBAN REVIEW PLAN INTERVIEW/EXCLUSION HEARINGS:

Maribel Cuban Criminal Custody Worksheets, NOT BP-14 PACKAGES, for those inmates scoring seven points or more will be forwarded to the following address:

U.S. Immigration and Naturalization Service

801 I Street NW

Room 800

Washington, D.C. 20536

ATTN: Cuban Review Plan

These aliens are to be taken into or remain in INS custody. Maribel Cuban Aliens housed in BOP installations, shortly after passing into INS custody, will appear for an interview before a Cuban Review Panel. Maribel Cuban aliens serving federal sentences ARE NOT to be removed from federal prisons unless the detainer has been lifted.

Those detainees that are not incarcerated in BOP institutions will be moved to a centralized location so that may be scheduled for an interview before a Cuban Review Panel and exclusion or removal hearing if necessary. If arrangements for the transfer of these inmates cannot be accomplished at the local level, John Castro, HQDRO, (202) 514-1958, will provide assistance in this area.

The local INS officer MUST ensure that a completed Maribel Cuban Criminal Custody Worksheet is placed in the file of each detainee prior to his transfer to a non-BOP facility. If this document is not readily available, the receiving INS office WILL NOT accept this detainee into its jurisdiction. THERE WILL BE NO EXCEPTIONS.

Maribel Cuban aliens not incarcerated in BOP institutions, who are interviewed by Cuban Review Panels and subsequently granted approval for release on parole, will be released from the custody of the INS only after proper sponsorship and/or placement has been ascertained. HQDRO will review the cases of those detainees ordered continued in detention and determine if subsequent placement into a BOP facility is warranted.

**PLACEMENT INTO BUREAU OF PRISONS FACILITIES:** HQDRO will then forward a list of Maribel Cuban aliens who have been recently ordered continued in detention by the Associate Commissioner for Enforcement to the appropriate INS field office. A BP-14 package will be prepared for each detainee. The previously prepared Maribel Cuban Criminal Custody Worksheet, which is also used as a classification mechanism by the BOP, MUST also accompany the BP-14 package.

This documentation is to be forwarded to John Castro, HQDRO, (202) 514-1958, at the following address:

U.S. Immigration and Naturalization Service



801 I Street NW

Room 800

Washington, D.C. 20536

ATTN: Cuban Review Plan

Please note that BP-14 packages for inmates who are not detained in BOP facilities and who additionally are ordered continued in detention by the Associate Commissioner for Enforcement will be requested by HQDRO. THIS PAPERWORK IS NOT TO BE SENT TO HEADQUARTERS UNLESS OTHERWISE AUTHORIZED. If an emergency situation arises and immediate BOP placement is required, the corresponding field office should initiate such a request. In these instances, John Castro, HQDRO, (202) 514-1958, may be contacted.

HQDRO will take appropriate measures to forward the incoming BP-14 packages for subsequent placement of these Mariel Cuban aliens into BOP institutions. Once accepted by the BOP, the corresponding regional and field offices will be notified to make arrangement to effect their transfer. A list, specifying the last names and INS A-file numbers of each detainee authorized for BOP placement, will also be provided to the corresponding regional and field offices on a monthly basis.

#### INSTRUCTIONS FOR THE MARIEL CUBAN CRIMINAL CUSTODY WORKSHEET

Before scoring the criminal as well as institutional activity of the Mariel Cuban alien, specific information pertaining to this detainee must be provided on the top of the Mariel Cuban Criminal Custody Worksheet. Biographical data such as the name, date of birth, and sex of the inmate should be noted. The BOP number, if available, INS A-file number, and corresponding files control office (FCO) should similarly be provided. The place of current incarceration as well as estimated release date of the Mariel Cuban alien or, in the alternative, date of placement into INS custody must also be properly noted on this form.

1. Severity of Current Offense: Assign the appropriate number of points to reflect the severity of the documented offense BEHAVIOR of the most severe offense(s) for which the individual was sentenced on this period of incarceration, i.e., the offense for which the detainee has served or is serving time. DO NOT USE this same information to assign points on the history items (#4 and 5).

POINTS

SEVERITY

0

Lowest

2

Low Moderate

4

Moderate

6

High

8

Greatest

2. Type of Prior Felony Convictions: Examine the previous convictions of the detainee. Exclude the offense for which the detainee is currently incarcerated (See Item 1). Determine which offense rates HIGHEST on the severity of offense scale and assign corresponding points in the following manner:

POINTS

SEVERITY

TYPE

0

Lowest

None

1

Low Moderate

Minor

3

Moderate

Moderate

High and/or Greatest

Serious

Example: The detainee was previously convicted of possession of cocaine and armed robbery. The criminal offense of armed robbery rates higher on the severity of offense scale than possession of cocaine. Under the severity of offense scale, armed robbery is classified as high and in this instance the type of prior felony convictions for this individual would be considered serious. As a result, this detainee would be assigned five (5) points under this segment of the Mariel Cuban Criminal Custody Worksheet.

3. History of Escapes or Attempts: Assign the appropriate number of points to reflect the escape history of the individual. History includes the individual's entire background of escapes and/or attempts to escape from confinement. However, if the most recent conviction was for an escape and/or attempt to from confinement, it is not to be scored in this segment of the Mariel Cuban Criminal Custody Detainer Worksheet. Escapes or attempted escapes are to be recognized even though the act may never have been criminally prosecuted. Also, consideration is to be given to BEHAVIOR relating to a prior offense, (such as flight to avoid prosecution). DO NOT USE BEHAVIOR RELATED TO THE CURRENT OFFENSE FOR THIS ITEM. If there were multiple escapes and/or attempted, use the most severe. The length of time begins with the DATE OF DOCUMENTED OCCURRENCE. Documented information from juvenile adjudication MAY also be used, unless the record has been expunged.

## **Appendix 19-1 Fugitive Operations Organization [Reserved]**

## **Appendix 25-1 INS Acquisition Procedures for Intergovernmental Service (Jail) Agreements (Added DD00-02)**

Immigration and Naturalization Service Acquisition Procedures

INSAP-04-02

ACQUISITION PROCEDURES FOR

INTER-GOVERNMENTAL SERVICE

(JAIL) AGREEMENTS

See Distribution

Procurement Division

References: (a) The Immigration and Nationality Act 103(a)(9)(A), 8 USC 1103(a)(9)(A)

(b) OMB Circular A-87, as amended

(c) Jail Inspection Standards

Attachments: Standard Inter-Governmental Service Agreement

Cost Schedule

U.S. Marshals Service Listing

## 1. PURPOSE

To establish uniform and consistent guidance and procedures for the Immigration and Naturalization Service (INS) when entering into an Inter-Governmental Service Agreement (IGSA) with a State or political subdivision of a State for the temporary housing and care of adults detained by the INS, in its enforcement of the immigration laws of the United States.

## 2. DEFINITIONS

A. Assistant District Director for Detention and Deportation. This position, also known as the AD DD, is the highest ranking employee responsible for detention services in an INS District Office.

B. Inter-Governmental Service Agreement. This INS document, also known as the IGSA or jail agreement, contains standard, written terms and conditions. Under an IGSA a Service Provider agrees to provide detention services for persons awaiting immigration court proceedings or final order of removal under the authority of the Immigration and Nationality Act. Detention Services normally include shelter, supervision, food, clothing, and basic medical care as well as guarantees of access to phones, legal services, pro bono groups, family, and the courts. Provisions for translator services, transportation, and administrative space for INS and Executive Office for Immigration Review staff to service detainees cases may also be included. Detention service excludes construction or alteration of buildings or areas. Construction, renovation, or facility upgrades may be provided for under the terms of the Cooperative Agreement Program (CAP). Jail agreements are signed by the Service Provider and by an INS Senior Warranted Contracting Officer. Jail agreements are firm fixed-price contracts subject to OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments rather than the Federal Acquisition Regulation (FAR).

C. Inter-Governmental Agreement. This United States Marshals Service (USMS) document is also known as the IGA, contains standard, written terms and conditions under which a State (or political subdivision of a State) agrees to incarcerate Federal

prisoners on a temporary basis. The Federal prisoners are incarcerated on behalf of the U.S. Marshals Service (USMS) or other Federal agencies that USMS has cited in the agreement. The IGA is not subject to the FAR but is a cost reimbursement vehicle subject to OMB Circular A-87.

D. Jail. This is the generic term for a detention facility operated by a State, Commonwealth, or a political subdivision thereof.

E. U.S. Marshal. This position is in charge of one of the 94 U.S. Marshal Districts throughout the United States.

F. Senior Warranted Contracting Officer. This position, also known as the SWCO, has the authority to bind INS with jails through delivery orders, purchase orders, BPAs or IGSA action. The SWCO has authority to negotiate terms and price, sign, modify, and terminate jail agreements.

G. Service Provider. This entity is the State or Political Subdivision of a State (i.e., State, County or City government.) Most IGSA's are between INS and county governments.

### 3. BACKGROUND

The INS, Bureau of Prisons (BOP), and USMS rely on the use of jails to house prisoners and detainees temporarily. The INS usually handles long-term detention needs in either facilities we own and operate, or in facilities a contractor owns and operates. Over the past several years, the demand from the Detention and Deportation program (D&D), Border Patrol, Investigations, and Inspections for jail space has increased.

Historically State and local governments have rejected FAR restrictions to procure jail space. In 1982, the Office of Management and Budget Director, David Stockman, recognized the unique nature of the federal detention marketplace. In a memorandum to the Department of Justice he authorized the BOP, USMS, and INS to process jail agreements outside of the FAR. Eventually, BOP and USMS received their own statutory authority to acquire temporary detention services for federal prisoners. However, INS was forced to rely upon the Stockman memo as its authority to acquire temporary detention services for over a decade.

In 1993, the Office of General Counsel drafted statutory language for INS to have its own authority to enter into IGSA's. In 1996, this statutory language was added to the Illegal Immigration Reform and Immigrant Responsibility Act. The Act was renamed the Immigration and Nationality Act. This Act authorizes INS to pay any State or political subdivision thereof for "administrative" detention of aliens. [See INA 103(a)(9)(A), 8 USC 1103(a)(9)(A)].

### 4. GUIDANCE

Commissioner Meissner has agreed with the Department of Justice that INS shall first use an existing USMS agreement if one exists with that jail. The USMS has over 1200 IGAs throughout the country. The INS has approximately 500 IGSA. If no IGA exists, INS must write and IGSA. (The Department does not require INS to use BOP agreements first as the BOP agreements are significantly different in nature from those of USMS and INS.)

The component within INS that coordinates detention services is the ADDD. Authority for executing delivery orders against IGAs as well as INS procurement instruments for jail space lies in Administrative Center Procurement Offices. The INS use of jails requires coordination among operational staff, Procurement, G-104 clerks, Finance, and the Office of General Counsel.

## 5. PROCEDURES

A. The requesting ADDD will contact the Marshal for the USMS District where the jail is located. (Border Patrol, Inspections, and Investigations will notify the servicing ADDD concerning their need for jail space.) The ADDD either will receive a copy of the existing IGA or the U.S. Marshal will respond that USMS does not have an existing IGA. If there is an IGA, the ADDD shall use the rates provided in the IGA. If the ADDD experiences difficulty in obtaining IGA information, the ADDD should contact the INS Director of Detention Operations at (202) 514-1970. If additional detention services are required by INS above those provided for Marshals detainees, the ADDD should request local Marshals staff to prepare form USM-243 to modify the existing IGA.

B. If there is no IGA, the ADDD will then contact the Service Provider concerning the use of their jail. The ADDD queries the jail for availability of space and price, and completes the jail inspection report.

C. After the jail passes inspection, the ADDD submits a G-514 funded for the anticipated need to the SWCO. The anticipated need includes activities of all INS Enforcement Officers (Border Patrol, Investigations, Inspections, and D&D) in the locality for the fiscal year.

D. If the anticipated need is less that \$2500 and less than 60 days, the SWCO may issue a unilateral purchase order to the jail. If the anticipated need will be repetitive, exceeds \$2500, but is shorter than 60 days, the SWCO may issue a BPA to the jail listing specific enforcement officers as the authorized callers. This simplified acquisition establishes a relationship between INS and the jail. Headquarters Field Operations has limited the duration of a purchase order or BPA awarded to any given jail to 60 days within a 12-month period.

E. If the anticipated need is estimated to exceed 60 days within a 12-month period, INS must use an IGSA rather than a purchase order or BPA. The ADDD must submit a blank IGSA form plus attachments to the Service Provider. To maintain consistency and

uniformity in the IGSA process, there is one basic IGSA format. The basic IGSA and cost schedule are provided as attachments to this INSAP.

F. The ADDD receives the IGSA information from the Service Provider. It is important that the Service Provider not sign the IGSA at this point. The ADDD submits the preliminary information to the Regional Office of D&D for concurrence. The Regional D&D Office submits the package to the Procurement Office at the Administrative Center. The following information must be included in the IGSA request package:

- (1) Location of the facility, the name and telephone number of the contact point.
- (2) The number of bed spaces. (If a guaranteed minimum is requested, the Regional Director of the requesting component must certify in writing that INS can consistently provide the number of detainees to support this guaranteed minimum). Normally, INS guarantees do not exceed 80% of the total number of bedspaces the Service Provider has agreed to make available for INS use.
- (3) An unfunded requisition or a request memo from the ADDD. All agreements with guaranteed minimum number of bed spaces must have a requisition funded for the guaranteed usage from the anticipated execution date through the end of the current fiscal year.
- (4) The period of performance. (It may be for an indefinite amount of time or a certain number of years).
- (5) A copy of the INS jail inspection report. (A statement to proceed with the IGSA may accompany the report if the facility does not meet all of the standards and INS wants to proceed with using the jail.)

G. The SWCO verifies the cost information and negotiates the rates with the Service Provider. Additional clauses may be included, depending on the circumstances. If negotiating a new IGSA with a guaranteed minimum, the ramp-up of the guaranteed minimum must be implemented in stages. When the SWCO has concluded negotiation, (s)he submits the final IGSA to the Service Provider for signature.

H. Because this is a group (County Board) decision in most counties, INS cannot expect to obtain signatures immediately. After the Service Provider signs the IGSA, (s)he sends the IGSA to the SWCO. If the IGSA includes either a guaranteed minimum number of bed spaces that INS will automatically pay monthly, or other than standard conditions, the SWCO will submit the IGSA to Headquarters Procurement for review.

(Note: all IGSA's with a guaranteed minimum of bedspaces will have a variation of the IGSA standard format.

I. Headquarters Procurement will forward the document to the Office of General Counsel for final review and concurrence.

J. The agreed-upon IGSA should be reviewed by the requesting ADDD. After the ADDD, the SWCO , and the Service Provider agree upon the terms and pricing, the SWCO and the Service Provider sign the IGSA. The IGSA is now ready for use.

K. The SWCO shall send a copy of the signed IGSA to the servicing Finance Office and HQ Office of Field Operations Detention and Removals Branch.

L. On the first day of the month (e.g. January 1) the ADDD establishes a monthly obligation estimate of IGSA use and forwards such to the Approving Official. However, if there is a guaranteed minimum, the ADDD estimates only the amount that the ADDD anticipates will exceed the guaranteed minimum.

M. The Approving Official approves and sends the monthly obligation estimate to the Funding Officer.

N. The Funding Officer certifies funds and submits to the Districts G-104 clerk.

O. The G-104 clerk enters in the G-104 system.

P. The ADDD must amend the estimated obligation during the month if jail usage exceeds the estimate.

Q. At the end of the month the ADDD prepares the obligation report for the completed month if jail usage exceeds the estimate.

R. Upon receipt of the Service Providers invoice, the ADDD is to first determine whether the invoice is proper. (For discussion of "proper," see the IGSA document, Article XII, paragraph B.) If the invoice is not proper, the ADDD must return it to the Service Provider.

S. If the invoice is proper, the ADDD must reconcile any difference between the dollar amount of the obligation report and the jail invoice. Difference is usually due to use of the IGSA by non- D&D operations staff who have not communicated their use of the jail space to the ADDD. IF a difference cannot be worked out verbally with the Service Provider, the ADDD must return the invoice to the Service Provider. The INS forms [I-203](#) and [I-203 A](#) are useful in verifying delivery of detention services.

T. The ADDD certifies the invoice and sends the invoice to the Finance Office

U. On the first Friday of the following month (e.g. February) the ADDD submits the obligation report and the detainee log through the Approving Official and the funding officer to the G-104 clerk.

V. The G-104 clerk enters the obligation in the system and sends the obligation report to the Finance Office.



W. When the Finance Office has the certified obligation report, the detainee log, and the approved invoice, they may pay the Service Provider.

X. The ADDD prepares a monthly estimate of usage for the next month (e.g. February) and submits it to the G-104 clerk. Steps L through W recur.

## 6. RESPONSIBILITIES

A. The requesting ADDD is responsible for:

- (1) Contacting the local Marshal to inquire whether there is an existing IGSA;
- (2) Obtaining a copy of the IGA, if there is one;
- (3) Performing annual inspections on IGSA jails in accordance with the INS Jail Inspection Standards;
- (4) Ensuring that all of the necessary documentation to enter into an IGSA is provided to the Senior Warranted Contracting Officer;
- (5) Completing an estimated obligation report to the G-104 clerk monthly;
- (6) Compiling a daily jail usage log;
- (7) Reconciling the obligation report with the Service Providers invoice and resolving disputed amounts with the Service Provider;
- (8) Certifying the Service Providers monthly invoice or rejecting it; and
- (9) Sending the invoice to Finance Office for payment.

B. The Office of General Counsel is responsible for determining legal sufficiency and approval/disapproval of non-standard IGSA actions and IGSA's with a guaranteed minimum number of bed spaces.

C. The Senior Warranted Contracting Officer is responsible for:

- (1) Ensuring that the necessary documentation is provided by the requesting ADDD;
- (2) Negotiating the terms of the purchase order, BPA, IGSA or modifications of the IGSA for rate or usage charges;
- (3) Signing the purchase order, BPA, or IGSA agreement; and
- (4) Submitting signed purchase orders, BPAs and IGSA's to the Finance Office.

## 7. CANCELLATION

The INSAP cancels and supersedes any previous guidance, instructions, bulletins, etc., which address the IGSA procedures.

## 8. EFFECTIVE DATE

THE INSAP is effective upon issuance.

## 9. INFORMATION

Questions or inquiries concerning this INSAP should be directed to Diana Anderson, Procurement Analyst, Headquarters Planning, Policy & Oversight Branch, telephone (202) 305-1487.

Mario A. Cadori

Bureau Procurement Chief

# **Appendix 25-2 Standard Intergovernmental Service (Jail) Agreement (revised 10/9/98) (Added DD00-02)**

Inter-Governmental

Service Agreements

Revised October 9, 1998

Contents

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[IGSA Standards](#)

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Jail Services Cost Statement

DIHS Pre-authorization Form

ACH Vendor/Miscellaneous Payment Enrollment Form (SF 3881)

OMB Circular A-87: See Internet web site:  
[www1.whitehouse.gov/omb/circulars/a087.html](http://www1.whitehouse.gov/omb/circulars/a087.html)

## IGSA Standards

Department of Justice

Immigration and Naturalization Service

Intergovernmental Service Agreement for Housing Federal Detainees

### Article I. Purpose

A. Purpose. The purpose of this Intergovernmental Service Agreement (IGSA) is to establish an Agreement between the Immigration and Naturalization Service (INS), a component of the Department of Justice, and a state or local government agency (Service Provider) for the detention and care of persons detained under the authority of the Immigration and Nationality Act, as amended. The term "Parties" is used in this Agreement to refer jointly to INS and the Service Provider.

B. Responsibilities. This Agreement sets forth the responsibilities of INS and the Service Provider. The Agreement states the services the Service Provider shall perform satisfactorily to receive payment from INS at the prescribed rate.

C. Guidance. The Parties will determine the detainee day rate in accordance with OMB Circular A-87, Cost Principles for State, local, and Indian Tribal Governments (Attachment A) and the INS Cost Statement (Attachment B).

### Article II. General

A. Funding. The obligation of INS to make payments to the Service Provider is contingent upon the availability of Federal funds. The INS will, however, neither present detainees to the Service Provider nor direct performance of any other services until the INS has the appropriate funding.

B. Subcontractors. The Service Provider shall notify and obtain approval from the INS if it intends to house INS detainees in a facility other than that specified on the cover page of this document. If either that facility, or any future one, is operated by an entity other than the Service Provider, INS shall treat that entity as a subcontractor to the Service Provider. The Service Provider shall ensure that any subcontract includes all provisions of this Agreement, and shall provide INS with copies of all subcontracts in existence during any part of the term of this Agreement. The INS will not either accept invoices from, or make payments to, a subcontractor.

C. Consistent with law. Any provision of this Agreement contrary to applicable statutes, regulation, policies, or judicial mandates is null and void, but shall not necessarily affect the balance of the Agreement.

### Article III. Covered Services

A. Bed space. The Service provider shall provide up to \_\_\_ (male) \_\_\_ (female) beds in the \_\_\_\_\_ on a space available basis. The Service Provider shall house all detainees [in the same unit] [may spread the detainees throughout the population]. The INS will be financially liable only for the actual detainee days as defined in Paragraph C. of this Article.

B. Basic needs. The Service Provider shall provide adult INS detainees (gender as specified in Paragraph A of this Article) with safekeeping, housing, subsistence, medical and other services in accordance with this Agreement. In providing these services, the Service Provider shall ensure compliance with all applicable laws, regulations, fire and safety codes, policies, and procedures. If the Service Provider determines that INS has delivered a person for custody who is under the age of 18, the Service Provider shall not house that person with adult detainees, and shall notify the INS immediately. The types and levels of services shall be those the Service Provider routinely affords to other inmates.

C. Unit of service and financial liability. The unit of service will be a "detainee day" (one person per day). The detainee day begins on the date of arrival. The Service Provider may bill INS for the date of arrival but not the date of departure. For example: If a detainee is brought in at 1900 Sunday and is released at 0700 on Monday, the Service Provider may bill for 1 detainee day. If a detainee is brought in at 0100, Sunday and is released at 2359 Monday, the Service Provider may bill for only 1 detainee day. The INS shall be responsible to pay for only those beds actually occupied.

D. Interpretive services. The Service Provider shall make special provisions for non-English speaking, handicapped or illiterate detainees. The INS will reimburse the Service Provider for any costs associated with providing commercial written or telephone language interpretive services, and upon request, will assist the Service Provider in obtaining translation services. The Service Provider shall provide all instructions verbally (in English or the detainee's native language as appropriate) to detainees who cannot read. The Service Provider shall include the amount that the Service Provider paid for such services on their regular monthly invoice. The Service Provider shall not use detainees for translation services, except in emergency situations. If the Service Provider uses a detainee for translation service, it shall notify INS within 24 hours.

#### Article IV. Receiving and Discharging Detainees

A. Required activity. The Service Provider shall receive and discharge detainees only from and to either properly identified INS personnel or other properly identified Federal law enforcement officials with prior authorization from INS. Presentation of U.S. Government identification shall constitute proper identification. The Service Provider shall furnish receiving and discharging services twenty-four (24) hours per day, seven (7) days a week. The INS shall furnish the Service Provider with reasonable notice of receiving or discharging detainee(s). The Service Provider shall ensure positive identification and recording of detainees and INS officers. The Service Provider shall not

permit medical or emergency discharges except through coordination with on duty INS officers

B. Restricted release of detainees. The Service Provider shall not release INS detainees from its physical custody to any persons other than those described in Paragraph A of this Article for any reason, except for either medical, other emergent situations, or in response to a federal writ of habeus corpus. If an INS detainee is sought for federal, state or local court proceedings, only INS may authorize release of the detainee for such purposes. The Service Provider shall contact INS immediately regarding any such requests.

C. Service Provider right of refusal. The Service Provider retains final and absolute right either to refuse acceptance, or request removal, of any detainee exhibiting violent or disruptive behavior, or of any detainee found to have a medical condition that requires medical care beyond the scope of the Service Provider's health provider. In the case of a detainee already in custody, the Service Provider shall notify the INS and request such removals, and shall allow the INS reasonable time to make alternative arrangements for the detainee.

D. Emergency evacuation. In the event of an emergency requiring evacuation of the Facility, the Service Provider shall evacuate INS detainees in the same manner, and with the same safeguards, as it employs for persons detained under the Service Provider's authority. The Service Provider shall notify INS within two hours of such evacuation.

#### Article V. Minimum Service Standards

The Service Provider shall:

A. house INS detainees in a facility that complies with all applicable fire and safety codes as well as ensure continued compliance with those codes throughout the duration of the Agreement.

B. provide guard personnel to ensure that there is a 24 hour visual supervision of detainees when housed in a dormitory type setting. The Service Provider shall visually and physically check detainees in individual cells at least hourly.

C. segregate detainees in custody by gender and by risk of violence to other detainees

D. provide a mattress, with a mattress cover, and when appropriate, a blanket to each detainee held overnight.

E. provide a minimum of three nutritionally balanced meals in each 24 hour period for each detainee. These meals shall provide a total of at least 2,400 calories per 24 hours. There will be no more than 14 hours or fewer than 4 hours between meals. The Service Provider will provide a minimum of two hot meals in this 24 hour period.

F. provide medical services as described in Article VI below.

G. provide a mechanism for confidential communication between INS detainees and INS officials regarding their case status and custody issues. The mechanism may be through electronic, telephonic, or written means, and shall ensure the confidentiality of the issue and the individual detainee.

H. afford INS detainees, indigent or not, reasonable access to public telephones for contact with attorneys, the courts, foreign consular personnel, family members and representatives of pro bono organizations.

I. permit INS detainees reasonable access to presentations by legal rights groups and groups recognized by INS consistent with good security and order.

J. afford each INS detainee with reasonable access to legal materials for his or her case. The INS will provide the required materials. The Service Provider will provide space to accommodate legal materials at no additional cost to INS.

(Note: The INS may waive this requirement where the average length of detention is 30 days or less.)

K. afford INS detainees reasonable visitation with legal counsel, foreign consular officers, family members, and representatives of pro bono organizations.

L. provide INS detainees with access to recreational programs and activities as described in the INS Recreation Standards (Attachment C) to the extent possible, under appropriate conditions of security and, supervision to protect their safety and welfare.

#### Article VI. Medical Services

A. **Auspices of Health Authority.** The Service Provider shall provide INS detainees with onsite health care services under the control of a local government designated Health Authority. The Service Provider shall ensure equipment, supplies, and materials, as required by the Health Authority, are furnished to deliver health care on site.

B. **Level of Professionalism.** The Service Provider shall ensure that all health care service providers utilized for INS detainees hold current licenses, certifications, and/or registrations with the State and/or City where they are practicing. The Service Provider shall retain a registered nurse to provide health care and sick call coverage unless expressly stated otherwise in this Agreement. In the absence of a health care professional, non-health care personnel may refer detainees to health care resources based upon protocols developed by United States Public Health Service (USPHS) Division of Immigration Health Service (DIHS). Healthcare or health trained personnel may perform screenings.

C. **Access to health care.** The Service Provider shall ensure that onsite medical and health care coverage as defined below is available for all INS detainees at the facility for at least eight (8) hours per day, seven (7) days per week. The Service Provider shall ensure that

its employees solicit each detainee for health complaints and deliver the complaints in writing to the medical and health care staff. The Service Provider shall furnish the detainees instructions in his or her native language for gaining access to health care services as prescribed in Article III, Paragraph D.

D. On site health care. The Service Provider shall furnish onsite health care under this Agreement. The Service Provider shall not charge any INS detainee an additional fee or co-payment for medical services or treatment provided at the Service Provider's facility. The Service Provider shall ensure that INS detainees receive no lower level of onsite medical care and services than those it provides to local inmates. Onsite health care services shall include arrival screening within 24 hours of arrival at the Facility, sick call coverage, provision of over-the-counter medications, treatment of minor injuries (e.g., lacerations, sprains, contusions), treatment of special needs and mental health assessments. Detainees with chronic conditions shall receive prescribed treatment and follow-up care.

E. Arrival screening. Arrival screening shall include at a minimum TB symptom screening, planting of the Tuberculin Skin Test (PPD), and recording the history of past and present illnesses (mental and physical).

F. Unacceptable medical conditions. If the service Provider determines that an INS detainee has a medical condition which renders that person unacceptable for detention under this Agreement (for example, contagious disease, condition needing life support, uncontrollable violence), the Service Provider shall notify INS. Upon such notification the Service Provider shall allow INS reasonable time to make the proper arrangements for further disposition of that detainee.

G. DIHS Pre-approval for non-emergent off site care. The DIHS acts as the agent and final health authority for INS on all off-site detainee medical and health related matters. The relationship of the DIHS to the detainee equals that of physician to patient. The Service Provider shall release any and all medical information for INS detainees to the DIHS representatives upon request. The Service Provider shall solicit DIHS approval before proceeding with non-emergency off-site medical care (e.g. off site lab testing, eyeglasses, cosmetic dental prosthetics, dental care for cosmetic purposes). The Service Provider shall submit supporting documentation for non-routine, off-site medical/health services to DIHS. (See Attachment D.) For medical care provided outside the facility, the DIHS may determine that an alternative medical provider or institution is more cost effective or more aptly meets the needs of INS and the detainee. The INS may refuse to reimburse the Service Provider for non-emergency medical costs incurred that were not pre-approved by the DIHS. The Service Provider shall send requests for pre-approval and all medical providers approved to furnish off-site health care of detainees shall submit their bills to:

DIHS

ATTN: Jail Management System

P.O. Box 50945

Washington, DC 20091

H. Emergency medical care. The Service Provider shall furnish 24 hour emergency medical care and emergency evacuation procedures. In an emergency, the Service Provider shall obtain the medical treatment required to preserve the detainee's health. The Service Provider shall have access to an off site emergency medical provider at all times. The Health Authority of the Service Provider shall notify the DIHS Managed Care Coordinator by calling: 1(888)718-8947 as soon as possible, and in no case more than seventy-two hours after detainee receipt of such care. The Health Authority will obtain pre-authorization from the DIHS Managed Care Coordinator for service(s) beyond the initial emergency situation.

I. Off site guards. The Service Provider shall, without any additional charge to INS, provide guards during the initial 8 hours detainees are admitted to an outside medical facility. If negotiated with INS, the Service Provider shall provide guards beyond the initial 8-hour period, at the regular hourly rate of those guards. Absent such an arrangement, INS will be responsible for providing the guards at the end of the initial 8-hour period. The Service Provider shall not, however, remove its guards until INS personnel relieve them. The Service Provider shall submit a separate invoice for guard services beyond the initials hours with its regular monthly billing.

J. DIHS visits. The Service Provider shall allow DIHS Managed Care Coordinators reasonable access to its facility for the purpose of liaison activities with the Health Authority and associated Service Provider departments.

#### Article VII. No Employment of Unauthorized Aliens

Subject to existing laws, regulations, Executive Orders, and addenda to this Agreement, the Service Provider shall not employ aliens unauthorized to work in the United States. Except for maintaining personal living areas, persons detained for INS shall not be required to perform manual labor.

#### Article VIII. Period of Performance

This Agreement shall remain in effect indefinitely or until terminated by either Party upon 60 days written notice, unless an emergency situation requires the immediate relocation of detainees, or the Parties agree to a shorter period under the procedures prescribed in Article X.

#### Article IX. Inspection

A. Jail Agreement Inspection Report. The Service Provider shall allow INS to conduct inspections of the facility, as required, to ensure an acceptable level of services and acceptable conditions of confinement as determined by the INS. No notice to the Service



Provider is required prior to an inspection. The INS will conduct such inspections in accordance with the Jail Agreement Inspection Report, a copy of which is included as Attachment B to this Agreement. The Jail Inspection Report stipulates minimum requirements for fire/safety code compliance, supervision, segregation, sleeping utensils, meals, medical care, confidential communication, telephone access, legal counsel, legal library, visitation, and recreation. The INS will share findings of the inspection with the Service Provider's facility administrator to promote improvements to facility operation, conditions of confinement, and level of service.

B. Possible termination. If the Service Provider fails to remedy deficient service INS identifies through inspection, INS may terminate this Agreement without regard to the provisions of Articles VIII and X.

C. Share findings. The Service Provider shall provide INS copies of facility inspections, reviews, examinations, and surveys performed by accreditation sources.

#### Article X. Modifications and Disputes

A. Modifications. Actions other than those designated in this Agreement will not bind or incur liability on behalf of either party. Either party may request a modification to this agreement by submitting a written request to the other. A modification will become part of this Agreement only after the INS Regional Contracting Officer and the authorized signatory of the Service Provider have approved it in writing.

B. Disputes. The INS Regional Contracting Officer and the authorized signatory of the Service Provider are the parties to settle disputes, questions, and concerns arising from this Agreement. Settlement of disputes shall be memorialized in a written modification between the INS Regional Contracting Officer and authorized signatory of the Service Provider.

#### Article XI. Adjusting the Detainee Day Rate

The INS shall reimburse the Service Provider at the detainee day rate shown on the cover page of this document. The Parties may adjust that rate 12 months after the date of signing, and every 12 months thereafter. The Parties shall base the rate and adjustments on the principles set forth in OMB Circular A-87. Such adjustments shall be effective on the first day of the month following execution of the modification

#### Article XII. Enrollment, Invoicing, and Payment

A. Enrollment in electronic funds transfer. The Service Provider shall provide the INS office with the information needed to make payment by electronic funds transfer (EFT). As of January 1, 1999, INS will make all payments only by EFT. The Service Provider shall identify their financial institution and related information on Standard Form 3881, Automated Clearing House (ACH) Vendor/Miscellaneous Payment Enrollment Form, (Attachment F). The Service Provider shall submit a completed SF3881 to the INS

payment office prior to submitting its initial request for payment under this Agreement. If the EFT data changes, the Service Provider shall be responsible for providing updated information to the INS payment office.

B. Invoicing. The Service Provider shall submit an original itemized invoice containing the following information: the name and address of the facility; the name of each INS detainee, his or her A-number, and his or her specific dates of detention, the total number of detainee days; the daily rate; the total detainee days multiplied by the daily rate; an itemized listing of all other charges; and the name, title, address, and phone number of the local official responsible for invoice preparation. The Service Provider shall submit monthly invoices within the first ten working days of the month following the calendar month when it provided the services, to:

The U.S Immigration & Naturalization Service

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ATTN: Deportation Unit

Phone:

Fax:

C. Payment. The INS will transfer funds electronically through either an Automated Clearing House subject to the banking laws of the United States, or the Federal Reserve Wire Transfer System. The Prompt Payment Act applies to this Agreement. The Act requires INS to make payments under this Agreement the 30<sup>th</sup> calendar day after the Deportation office receives a complete invoice. Either the date on the Government's check, or the date it executes an electronic transfer of funds, shall constitute the payment date. The Act requires INS to pay interest on overdue payments to the Service Provider. The INS will determine any interest due in accordance with the Act.

### Article XIII. Government Furnished Property

A. Federal Property Furnished to the Service Provider. The INS may furnish federal property and equipment to the Service Provider. Accountable property remains titled to INS and shall be returned to the custody of INS upon termination of the agreement. The suspension of use of bed space made available to INS is agreed to be grounds for the recall and return of any or all government furnished property.

B. Service Provider Responsibility. The Service Provider shall not remove INS property from the facility without the prior written approval of INS. The Service Provider shall report any loss or destruction of such property immediately to INS.

#### Article XIV. Hold Harmless and Indemnification Provisions

A. Service provider held harmless. The INS shall, subject to the availability of funds, save and hold the Service Provider harmless and indemnify the Service Provider against any and all liability claims and costs of whatever kind and nature, for injury to or death any person(s), or loss or damage to any property, which occurs in connection with or incident to performance of work under the terms of this Agreement and which results from negligent acts or omissions of INS officers or employees, to the extent that INS would be liable for such negligent acts or omissions under the Federal Tort Claims Act 28 USC 2691 et seq.

B. Federal Government held harmless. The Service Provider shall save and hold harmless and indemnify federal government agencies to the extent allowed by law against any and all liability claims, and costs of whatsoever kind and nature for injury to or death of any person or persons and for loss or damage to any property occurring in connection with, or in any way incident to or arising out of the occupancy, use, service, operation or performance of work under the terms of this Agreement resulting from the negligent acts or omissions of the Service Provider, or any employee or agent of the Service Provider. In so agreeing, the Service Provider does not waive any defenses, immunities or limits of liability available to it under state or federal law.

C. Defense of suit. In the event a detainee files suit against the Service Provider contesting the legality of the detainee's incarceration and/or immigration/citizenship status, INS shall request that the U.S. Attorney's Office, as appropriate, move either to have the Service Provider dismissed from such suit, to have INS substituted as the proper party defendant, or to have the case removed to a court of proper jurisdiction. Regardless of the decision on any such motion, INS shall request that the U.S. Attorney's Office be responsible for the defense of any suit on these grounds.

D. INS recovery right. The Service Provider shall do nothing to prejudice INS' right to recover against third parties for any loss, destruction of or damage to U.S. Government property. Upon request of the Contracting Officer, the Service Provider shall, at the INS' expense, furnish to INS all reasonable assistance and cooperation, including assistance in the prosecution of suit and execution of the instruments or assignment in favor of INS in obtaining recovery.

#### Article XV. Financial Records

A. Retention of records. All financial records, supporting documents, statistical records, and other records pertinent to contracts or subordinate agreements under this Agreement shall be retained by the Service Provider for at least three years for purposes of federal examinations and audit. The 3-year retention period begins at the end of the first year of completion of service under the Agreement. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it or until the end of the regular 3-year period, whichever is later.

B. Access to records. The INS and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers or other records of the Service Provider or its sub-recipients which are pertinent to the award, in order to make audits, examinations, excerpts, and transcripts. The rights of access must not be limited to the required retention period, but shall last as long as the records are retained.

C. Delinquent debt collection. The INS will hold the Service Provider accountable for any overpayment, or any breach of this Agreement that results in a debt owed to the Federal Government. The INS shall apply interest, penalties and administrative costs to a delinquent debt owed to the Federal Government by the Service Provider pursuant to the Debt Collection Improvement Act of 1982, as amended.

#### Article XVI. Provision of Space to INS and EOIR

A. Service Provider responsibilities. The Service Provider shall provide suitable support, office and administrative space, for use by INS. As necessary, the Service Provider will provide sufficient safe and secure storage space for all INS detainee baggage. In addition, the Service Provider agrees, if required, shall furnish acceptable office and administrative space to the Executive office of Immigration Review (EOIR). The Service Provider shall bear all costs associated with the use of jail and office space by INS and EOIR (e.g. those for preparing, operating and maintaining such facilities for INS and EOIR, and incurred for temporarily relocating the Service Provider's employees). The Service Provider shall equip the office and administrative space furnished to INS and EOIR with a telephone system compatible with the federal telephone network. The Service Provider shall furnish the security and janitorial services for this space. The Service provider shall include all costs associated with providing space or services under this Paragraph in the calculation of the detainee rate day rate.

(Note: The Service Provider shall have no obligation under this Paragraph unless the Parties negotiate specific terms for such space or services.)

B. Federal Government responsibilities. The INS will incur the costs of installing computer cabling, telephone lines and any additional telephone trunk lines and telephone switch equipment which may be required. The INS will be responsible for payment of INS long-distance telephone bills for INS staff.

End of document

Attachments:

A OMB Circular A-87

B. INS Cost Statement Form

C. INS Recreation Standards

D. DIHS Pre-authorization Form

E. Jail Agreement Inspection Report

F. SF3881, ACH Vendor/Miscellaneous Payment Enrollment Form

## **Appendix 25-3 Detention Facility Addresses**

Contract Facilities

Contractor Owned and Operated

Wackenhut Corrections Corporation

11901 E. 30th Avenue

Aurora (Denver), CO 80010

303-361-0701 (DEN)

John Good, OIC

Wackenhut (Queens)

182-22 150th St

Jamaica., NY 11413

718-244-7956

Theresa Regis, OIC

Corrections Corporation of America

15850 Export Plaza

Houston, TX 77032

713-987-0358 (HOU)

Ken Landgrebe, OIC

R.R. 4, Box 125-A

Highway 59 E.

Laredo, TX 78041

210-727-4772 (LAR)

Donald McDole, OIC

625 Evans Street

Elizabeth, NJ 07201

201-622-7165 (ELZ)

Leroy Frederick, OIC

INS Owned/Contractor Operated

CSC. Inc.

815 Airport Way, South

Seattle, WA 98134

206-467-6030 (SEA)

William Paul, OIC

INS Owned and Operated

Aguadilla SPC

Corner Belt and Gun Street

Former Ramey Base

Aguadilla, PR 00604

787-890-3611 (AGU)

Linda Renz , OIC

Boston SPC

US Coast Guard Support Center

427 Commercial Street

Building 8, Fourth Floor

Boston, MA 02109

617-223-3088 (BOS)

James Dupont, OIC

El Centro SPC

1115 North Imperial Avenue

El Centro, CA 92243

619-353-2170 (ECC)

Hector Najira, OIC

El Paso SPC

8915 Montana Street

El Paso, TX 79925 (EPC)

915-540-7342

Arturo Arias, OIC

Florence SPC

3250 North Pinal Parkway Av.

Florence, AZ 85232

520-868-5862 (FLO)

Donald Looney, OIC

Krome North SPC

18201 S.W. 12th Street

Miami, FL 33194

305-552-7022 (KRO)

Vacant

Port Isabel SPC

Buena Vista Road

Route 3, Box 341

Los Fresnos, TX 78566

210-233-4431 (PIC)

Roel Delgado, OIC

San Pedro SPC

2001 Seaside Avenue

Terminal Island

San Pedro, CA 90731

310-732-0777 (SPP)

Gloria Kee, OIC

Varick Street SPC

201 Varick Street

New York, NY 10014

212-620-3449(VRK)

Vacant, OIC

Joint Federal Facilities

Federally Owned and Operated

(With Bureau of Prisons)

Federal Detention Center

(Oakdale II)



1010 East Whatley Road

Oakdale, LA 71463

318-335-0713 (OAK)

Nancy Hooks, OIC

Contractor Owned and Operated

(With Bureau of Prisons)

Corrections Corporation of America

4465 East Hanna Road

Eloy, AZ 85231(EAZ)

520-466-2000

Vacant, OIC

## **Appendix 26-1 Detention Operations Manual, M-482 -- Detention Standards**

[Detention Operations Manual](#)

## **Appendix 32-1 Vehicle Ordering Menu**

DETENTION AND REMOVAL OPTION PACKAGES FOR ORDERING VEHICLES

Option 1a. - Large Bus

1b. - Mid-Range Bus

Option 2a. - Standard Airporter

2b. - Wheelchair Accessible Airporter

(b)(2)High, (b)(7)e

(b)(2)High, (b)(7)e

Option 9. - Specialty Vehicle (i.e.: Utility or Food Service Truck;Tractor Trailer)

OPTION DESCRIPTION

Option 1a. - Large Bus

(b)(2)High, (b)(7)e

Purpose: Long distances, long trip duration, high capacity.

Option 1b. - Mid-range bus

(b)(2)High, (b)(7)e

Purpose: Shorter distances and shorter trip duration. Reduced passenger capacity.

Option 2a. Standard Airporter

(b)(2)High, (b)(7)e

Purpose: Designed for local area operations such as airport or court runs. Ideal for offices where routine operations call for mixed count of officers and detainees, or when detainee count routinely exceeds standard van capacity.

Option 2b. - Wheelchair accessible Airporter

(b)(2)High, (b)(7)e

Purpose: Same as option 2a, adding space for two wheel-chair passengers. Versatility to accommodate one or two wheelchairs and a combination of additional escort officers, detainee segregation or additional luggage/property space.

Option 3a. - (b)(2)High, (b)(7)e

(b)(2)High, (b)(7)e

Option 3b. - (b)(2)High, (b)(7)e

(b)(2)High, (b)(7)e

Purpose: Same as 3a. Ideal for locations where permanent, easily accessible luggage space is a priority. Side loading of detainees is possible, but not ideal.

Option 3c. - (b)(2)High, (b)(7)e Short-Bed Van with Insert

(b)(2)High, (b)(7)e

Purpose: Recommended for off road, border operations where long wheelbase bottoming out is a concern. Suitable for locations where luggage segregation and side loading availability is not necessary.

Option 3d. - (b)(2)High, (b)(7)e Passenger Standard Van, No Insert

(b)(2)High, (b)(7)e

Purpose

(b)(2)High, (b)(7)e

(b)(2)High, (b)(7)e

(b)(2)High, (b)(7)e

, Appropriate for transporting of detainees whose background, security level, and health conditions have been properly identified.

Option 3e. Standard Van, No Insert - wheelchair accessible

(b)(2)High, (b)(7)e

Purpose: Versatility to accommodate one wheelchair and up to seven detainees with segregation for large additional luggage/property space.

Option 4a. -

(b)(2)High, (b)(7)e

(b)(2)High, (b)(7)e

Purpose: Smaller transport vehicle with lower capacity. Ideal for offices where a smaller vehicle is conducive to operating area.

Option 4b. -

(b)(2)High, (b)(7)e

Description: (b)(2)High, (b)(7)e with standard fugitive operations package as described below.

Purpose: Self explanatory

Option 5a. (b)(2)High

Description: (b)(2)High, (b)(7)e with standard security screened package. Allows for up to three detainees.

Purpose: Secure detainee transport when low number of detainees is routine and a larger capacity vehicle is not warranted.

Option 5b. (b)(2)High, (b)(7)e

Description: (b)(2)High, (b)(7)e with standard fugitive operations package as described below.

Purpose: Self-explanatory.

Option 5c. (b)(2)High

Description: (b)(2)High, (b)(7)e with standard fugitive operations package as described below.

Purpose: Self explanatory

Option 6a. (b)(2)High, (b)(7)e

(b)(2)High, (b)(7)e

Purpose: Secure detainee transport when low number of detainees is routine and a larger capacity vehicle is not warranted.

Option 6b. (b)(2)High, (b)(7)e full-size Fugitive Operations package

Description: (b)(2)High, (b)(7)e

Purpose: Self explanatory

Option 6b. SUV mid-size Fugitive Operations package

Description: Mid size SUV with standard fugitive operations package as described below.

Purpose: Self explanatory

Option 7

(b)(2)High

(b)(2)High, (b)(7)e

Purpose: Self explanatory

Option 8

(b)(2)High

(b)(2)High, (b)(7)e

Option 9 Specialty Vehicle

Description: This is a specialty vehicle required to fulfill unique requirements, such as a Food Service Truck to be deployed at a Service Processing Center or tow-truck to be deployed to a Service Maintenance Shop. Prior to ordering, written justification to, and concurrence from, Regional and Headquarters DRO management is required.

FUGITIVE OPERATIONS PACKAGE: Standard Accessories and Amenities

Tilt steering wheel and cruise control

AM/FM radio

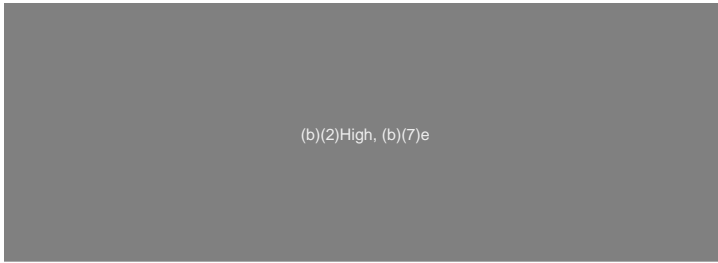
Power windows, locks, and side mirrors

Intermittent wipers

Road emergency kit

First aid kit

Fire extinguisher



No alterations are to be made to DRO vehicles without specific concurrence from Regional and Headquarters DRO management.

**CAGED/SECURE TRANSPORT VEHICLES (bus/van/suv/sedan): Standard Accessories and Amenities**

Tilt steering wheel and cruise control

AM/FM radio

Power windows, locks, and side mirrors

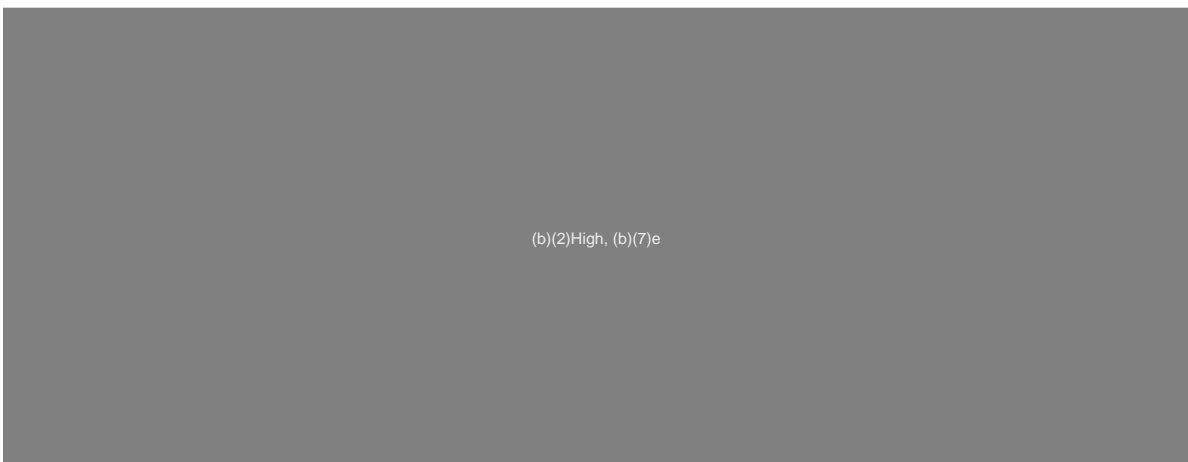
Intermittent wipers

Map light

Road emergency kit

First aid kit

Fire extinguisher



No alterations are to be made to DRO vehicles without specific concurrence from Regional and Headquarters DRO management.

ADDITIONAL ACCESSORIES AVAILABLE - (these items require written justification to, and concurrence from, Regional and Headquarters DRO management)

All Wheel Drive or Four Wheel Drive

Block heater

Heated side mirrors

Transmission cooler

Additional emergency lights

Brush guards

## **Appendix 33-1 Phonetic Alphabet Table**

A - ALPHA

B - BRAVO

C - CHARLIE

D - DELTA

E - ECHO

F - FOXTROT

G - GOLF

H - HOTEL

I - INDIA

J - JULIET

K - KILO

L - LIMA

M - MIKE



N - NOVEMBER

O - OSCAR

P - PAPA

Q - QUEBEC

R - ROMEO

S - SIERRA

T - TANGO

U - UNIFORM

V - VICTOR

W - WHISKEY

X - X-RAY

Y - YANKEE

Z - ZULU

## **Appendix 33-2 Agency-authorized 10" codes**

10-1 Receiving Poorly

10-2 Receiving Well

10-3 Disregard last information

10-4 Acknowledgment

10-5 Lookout

10-6 Busy

10-7 Out-of-service

10-8 In-service

10-9 Repeat

- 10-10 Furnish emergency assistance to/at
- 10-11 Investigate suspect
- 10-12 Visitors/officials present
- 10-13 Unit en route to location
- 10-14 Establish traffic checkpoint
- 10-15 We have persons in custody
- 10-16 Pick-up aliens in custody at
- 10-17 Inspection party will arrive
- 10-18 Anything for unit/officer
- 10-19 No traffic
- 10-20 What is your location?
- 10-21 Advise officer to telephone
- 10-22 Advise officer to report
- 10-23 Restrict Normal Communications
- 10-24 Resume Normal Communications
- 10-25 This code followed by "May Day"
- 10-26 One man vehicle stop
- 10-27 Check with civil authorities
- 10-28 Vehicle registration
- 10-29 Check stolen/wanted vehicle/person
- 10-30 Subject in custody speaks English
- 10-31 Engaging in pursuit
- 10-32 Two man vehicle stop

- 10-33 Alert: dangerous subject
- 10-34 Local ASU smuggling check
- 10-35 False claim check
- 10-36 Smuggler check (EPIC)
- 10-37 Observing traffic at
- 10-39 Your record check positive
- 10-40 No record your subject
- 10-41 Unit in service
- 10-42 Unit off duty
- 10-43 Switching channels
- 10-45 Apprehended smuggling case
- 10-48 Apprehended narcotic case
- 10-50 C.I.S. Check
- 10-52 Criminal history check
- 10-53 Firearms check
- 10-54 Vital statistics check
- 10-57 Drivers license check
- 10-86 Vehicle change
- 10-87 Meet officer at
- 10-88 Officer needs backup
- 10-97 End female escort
- 10-98 Begin female escort
- 10-99 Bomb threat

11-99 Officer down/all units respond

## **Appendix 36-1 DACS Users Manual**

[DACS User's Manual](#)

### **Appendix 36-1.1 Docket Control Office List**

Docket Control Offices

Code

Office

AGA

Agana, GU

ANC

Anchorage, AK

ATL

Atlanta, GA

BAL

Baltimore, MD

BOS

Boston, MA

BUF

Buffalo, NY

CHA

Charlotte Amalie, VI

CHI

Chicago, IL

CLE

Cleveland, OH

COW

Headquarters

DAL

Dallas, TX

DEN

Denver, CO

DET

Detroit, MI

ECC

El Centro, CA (SPC)

ELP

El Paso, TX

EPC

El Paso, TX (SPC)

FLO

Florence, AZ

HAR

Hartford, CT

HEL

Helena, MT

HHW

Honolulu, HI

HLG

Harlingen, TX

HOU

Houston, TX

KAN

Kansas City, MO

KRO

Krome, FL (SPC)

LOS

Los Angeles, CA

LRD

Laredo, TX

Code

Office

LVG

Las Vegas, NV

MIA

Miami, FL

NEW

Newark, NJ

NOL

New Orleans, LA

NYC

New York City, NY

OAK

Oakdale, LA (SPC)

OKC

Oklahoma City, OK

OMA

Omaha, NB

PHI

Philadelphia, PA

PHO

Phoenix, AZ

PIC

Port Isabel, TX (SPC)

PIT

Pittsburgh, PA

POM

Portland, ME

POO

Portland, OR

REN

Reno, NV

SAJ

San Juan, PR

SEA

Seattle, WA

SFR

San Francisco, CA

SLC

Salt Lake City, UT

SNA

San Antonio, TX

SND

San Diego, CA

SPM

St. Paul, MN

SPP

San Pedro, CA (SPC)

TUC

Tucson, AZ

VRK

Varick St, NY, NY (SPC)

WAS

Arlington, VA

**Appendix 36-2 EREM User Manual [Reserved]**

**Appendix 42-1 DRO Program/Project Code Crosswalk**



[DRO Program/Project Code Crosswalk](#)

## **Appendix 42-2 DRO Performance and Resource Management Cycle**

[DRO Performance and Resource Management Cycle](#)

## **Appendix 44-1 "Reporting Requirements for Significant Events," Memorandum, dated March 11, 2003**

U.S. Department of Homeland Security

Bureau of Immigration and Customs Enforcement

HQCOM 50/7.1.1

Office of the Assistant Secretary 425 I Street NW

Washington, DC 20536

March 11, 2003

MEMORANDUM FOR ALL IMMIGRATION

AND CUSTOMS ENFORCEMENT EMPLOYEES

FROM: Michael J. Garcia //signed//

Acting Assistant Secretary

SUBJECT: Reporting Requirements for Significant Events

(b)(2)High

manner of these incidents and events and are in position to immediately take appropriate actions.

This policy requires that incidents, significant events, and other emerging or sensitive matters occurring in the field and affecting ICE be reported telephonically by field personnel to the ICE Headquarters Reporting Center (HRC) within 2 hours after their occurrence or as soon as possible and practical. Written reports of the reportable incident, event or matter must be submitted as soon as possible and practical but, under no circumstances, later than 24 hours after occurrence of the reported incident, event, or matter.

The HRC will be the primary entity within ICE for the receipt of telephonic and written reports and will be responsible for communicating the information to the designated senior management official. The designated senior management official is responsible for determining if the significant incident should be reported to the Chief-of-Staff or the Assistant Secretary. In more serious events that occur over an extended period of time, regular updates are required, as more fully described below. All telephonic and written reports described in this policy must be initially directed to the HRC within the stated timeframes. First-line supervisors are responsible for telephonic notification to the HRC and the appropriate senior field managers in the usual chain-of-command of any reportable incident, event, or other matter. If a first-line supervisor is not available, a second-line supervisor is responsible for making the telephonic notification. An ICE Significant Incident Report (SIR) template has been developed and will be transmitted once Headquarters (HQ) has determined that it can be easily used by all field offices for reporting purposes. However, until that determination is made, field offices may continue to submit their reports via fax or e-mail using existing forms and/or formats to the fax number and e-mail address listed at the end of this memorandum. First-line supervisors are responsible for ensuring that the SIR is completed and submitted via fax or e-mail to the HRC.

Once the SIR is received at the HRC, it will be reviewed and routed as appropriate at ICE HQ. The HRC will assign an individual tracking number for each SIR and must return a copy of the SIR with the individually assigned number to the originator for tracking purposes. All follow-up reports advising the HRC of further actions related to previously submitted SIRs must contain the original SIR tracking number

There are occasions when significant events will involve confidential or classified information. If a supervisor believes that it would be inappropriate to disclose such information in a normal (routine) SIR, then the ICE-designated senior management official must still be contacted and advised of the incident. A SIR must also be submitted, but with the notation that the incident involves a sensitive or confidential matter and it must also indicate the senior official to whom the confidential report was made. The actual report will then be transmitted through approved methods.

The following descriptions are examples of incidents and events that must be reported, but they are not meant to serve as an all-inclusive list:

#### National Security and Terrorism-Related Issues

Any seizure of, or any situation or incident or other enforcement action associated with, a potential Weapon of Mass Destruction (WMD), including a chemical, biological, radiological, nuclear or explosive device, or a precursor or component of such a device.

Any seizure of funds connected to a suspected terrorist or terrorist organization.

Any arrest or detention of a suspected terrorist.

Responses to Interagency Border Inspection System (IBIS) hits or other interagency responses that suggest special-interest issues i.e., associates of known terrorists or terrorist organizations, including referrals to other agencies, such as the FBI, for follow-up action.

Any seizure based upon anti-terrorism enforcement initiatives, regardless of value or quantity.

Any seizure, arrest, or detention based upon an ICE anti-terrorism targeting effort.

Any seizure, arrest, or detention resulting from standard ICE enforcement activities that are, in the judgment of the reporting supervisor, potentially related to terrorism.

Any passenger, cargo, or conveyance examination in which potential terrorism-related documents or material are obtained, regardless of whether the examination resulted in the seizure or arrest for an ICE violation.

Any specific intelligence received indicating that a suspected terrorist, WMD or precursor component, or explosive device will enter or depart the United States (U.S.) by commercial or private conveyance or by pedestrian traffic, at a specific time or place, or that any dangerous device has been placed at a port-of-entry.

Any terrorist threat received by ICE personnel, including any threat against an employee, or at facilities in which ICE employees work, or at any facility where ICE personnel provide security.

Any significant request for assistance and operational response from another agency that is anti-terrorism related.

Any anticipated or ongoing situation related to potential terrorist activity that may involve or require significant operational coordination with another agency or with foreign authorities.

Any incident or activity not specifically addressed here that, in the judgment of the reporting supervisor, has the potential to contribute to the interagency effort to combat terrorism.

#### Employee-Related Issues

Any death of or serious injury to an ICE employee, on or off duty.

Any assault of an ICE employee occurring in relation to his or her employment or official duties. This includes investigative or prosecution updates.

Any shooting incident involving ICE employees, including accidental discharges.

Any instance involving more than a minimum amount of use of force to arrest or subdue an individual. This includes the use of an asp, deployment of capsicum spray, or an unusual amount of physical force by officers.

The death or serious injury of an individual that was caused by the actions of ICE personnel (either on or off duty) or which occurred while the individual was detained in ICE custody.

Any vehicle incident, including a pursuit or an unexpected stop that results in injury or death.

The arrest or incarceration of an ICE employee.

#### Facilities and Infrastructure Issues

Any unscheduled office closing for reasons that include, but are not limited to, bomb threats, public demonstrations, systems failures, weather, and environmental hazards.

Major disruptions of automated database systems on a national or regional basis.

Any declared airborne or marine emergency or incident resulting in property damage.

For ICE employees, as part of the Federal Protective Service, the policy set forth under the

General Services Administration (GSA) Order, PBS P 5930.17C, Chapter 3, Part 3, dated February 2000, is restated to include the following as reportable incidents and events under ICE:

Bombings, homicides, suicides, armed robberies, rapes, kidnappings, hostage situations, and thefts of Government property (except motor vehicles).

Any theft with a value exceeding \$15,000 or an arrest likely to generate executive or legislative branch interest and/or coverage by the national news media.

Discharge of a weapon by Federal Protective Service law-enforcement personnel or contract guards.

Serious injuries or fatalities involving Federal Protective Service personnel.

Civil disturbances that result in large-scale arrests and major disruption to a GSA facility.

#### Matters Involving Aliens Arrested or Detained

Any riot or significant disturbance at a facility where ICE detainees are incarcerated.

Any alien in ICE custody who has been on a hunger strike for 3 days and more.

Serious health issues or concerns at facilities where ICE detainees are lodged.

The detention of persons claiming foreign diplomatic immunity, foreign-government officials, prominent foreign nationals, and those persons claiming to be relatives of such officials.

The escape of any alien from ICE custody.

#### Contraband, Narcotic, and other Seizures

The seizure of a foreign or domestic commercial vessel or aircraft.

Seizures of more than:

500 kilograms of marijuana

50 kilograms of cocaine

50 kilograms of methamphetamine/amphetamine

200 kilograms of hashish

500 kilograms of khat

2 kilograms of heroin

2 kilograms of opium

2 kilogram of MDMA (ecstasy)

1 million dosages of units of other dangerous drugs

\$250,000 dollars in currency or negotiable instruments

\$500,000 dollars in real property or a business

\$1 million penalty

Stolen cars outbound (value in excess of \$250,000)

#### High-Profile Media and Political Issues

Any event or incident that involves or may result in national media attention.

Any event that may be politically sensitive to the United States or a foreign government(s), including searches and detentions of persons claiming diplomatic immunity or special status, requests for asylum made to ICE officials, and actions involving foreign or U.S. government officials, government representatives, prominent foreign nationals, or those persons claiming to be relatives of such officials.

#### Miscellaneous

Cyber-crime, including incidents of child pornography and/or the Internet-related sale of pharmaceuticals, worthy of national media attention.

Any other event that may warrant review by senior management to include heroic or lifesaving acts and/or public recognition, as well as significant results of search warrants.

The contact information for the HRC is:

Main number: 202-616-5000

Fax number: 202-305-4823

Secure Voice/Fax number: 202-514-0482

These instructions outline the proper procedures to be followed for reporting high-interest incidents, significant events, and other emerging or sensitive matters. However, high-profile, more volatile situations should be immediately reported telephonically to both the HRC and to the HQ component director. Furthermore, these instructions for special reporting do not relieve field offices of the requirement for regular reporting of routine matters through the chain-of-command.

All ICE components are required to fully comply with these instructions. Questions regarding reporting requirements and formats should be directed through the chain-of-command to

senior component managers for resolution.

Sincerely,

Michael J. Garcia

Acting Assistant Secretary

## **Appendix 44-2 Significant Incident Report Form**

### **SIGNIFICANT INCIDENT REPORT**

1. The date time, and location of the incident.

Date:

Time:

Location

2. Name and phone number of the person making the report. Reporting person involved  
YES/NO

Name Phone Number

2. a) Name and phone number of person to contact for follow up information.

Name Phone Number

2. b) Name and phone number of persons/agencies notified. Date and Time of  
Notification

Name Phone# Agency Date Time

1)

2)

ROBOR

3)

HQBOR

4)

INS COM CTR

5)

MEX CONSUL

6)

3. The location of the INS office with jurisdiction over the personnel involved.
4. A brief description of the incident.
5. The identity and current location of any injured or deceased person(s), including an assessment of the extent of injuries.
6. The identity and current location of:
  - a) INS personnel involved in the incident. EAP offered YES/NO
  - b) Witnesses (INS and civilian)
7. Firearms incidents only: The type of firearm(s) used, number of shots fired, and the current location of all firearms used in the incident.
8. Law enforcement organizations notified. Agencies initiated an investigation?  
YES/NO Unknown
9. Actual or expected media interest, including information released to the media

## **Appendix 45-1 INSpect Review Chart**

Issues identified in the (date) INSpect Review with follow-up questions  
(to determine whether these are still issues)

Responsible Program

Issues Identified in (date)

Follow-up Questions

Detention & Removal (Director/SPC)/Security and Control

1 The field office should have a written policy to ensure that all officers have read applicable post orders.



1. Did the facility director issue a policy memo that directs all officers to read applicable post order? Yes (date)
2. Does the facility director have sign off sheets to show officers have reviewed applicable post orders annually? If not, identify the corrective action. The CDEO will prepare officer sign off sheets for all existing post orders and will ensure that officers read, understand and sign off for each applicable post order within 30 days.
3. Does the facility director maintain a well-documented tracking system that accounts for annual review of post orders? The CDEO will create a log for all post orders and will review each post order annually for need changes/updates.

#### Detention & Removal (Director/SPC)/Detainee Services

2 The field office should ensure that each detainee receives a copy of the detainee handbook upon admission to the facility.

1. Did the facility director implement a system to track the issuance of detainee handbooks? Yes. Intake worksheets were revised to include sign off receipt when handbooks are issued to detainees.

#### Detention & Removal (SDO)

3 The field office should periodically check DACS to ensure Deportation Officers and Clerks are entering proper information into DACS.

4 The field office should periodically check DACS to ensure records associated with criminal aliens have alert codes.

1. What quality assurance steps are in place to ensure that the proper information is being entered into DACS? Supervisors are directed to conduct periodic audits to include checks from criminal alerts. Additional DACS training was provided to DRO personnel. DACS data integrity is a rating element for DOs and Clerks.

2. Is there a written SOP or an audit log to document this? The DACS training manual and employee PWPs address this.

#### Detention & Removal (SDO)

5 The field office should ensure that accepted bonds are forwarded to the Debt Management Center within 5 days.

1. What quality assurance steps are in place to ensure compliance with this policy? The SDO will provide training on the policy and procedures for preparation and/or acceptance of bond to all employees who perform this work.

2. What measures will be taken to ensure accountability? Deficiencies are recorded the appropriate job element of Employee Performance Work Plans.

Detention & Removal (SDO)

6 The field office should maintain appropriate contact numbers to respond to NCIC hits.

1. What measure will be taken to ensure proper response to NCIC hits? On (date), the SDO prepared a list of contact numbers and forwarded it to the LESC.

Detention & Removal (SDDO)

7 The field office should ensure that Jail Inspections are completed timely.

1. Did Jail Inspectors complete an inspection for all IGSA facilities currently in use? Yes. As of (date), an inspection was completed at each facility.

2. What assurance measures will be taken to ensure accountability? An annual call-up system was established for Jail Inspections.

3. Subject files have been properly updated with copy of the Jail Inspection Report.

Detention & Removal (SDDO)

8 The field office should maintain more accurate records that show completed jail inspections.

## **Appendix 45-1.1 Sample INSpect Report**

Chapter/Department/Pg #

Recommendation # and Comment

Corrective Action Taken (per Draft Report)

1/ Detention & Removal/ 1

1 The field office should have a written policy to ensure that all officers have read applicable post orders.

On (date), the Facility Director issued a memorandum that directs compliance with the INS Detention Standards / Post Orders. The memorandum requires officer to read all applicable post orders. The CDEO implemented an officer sign off sheet that verifies receipt and understanding by officers concerning applicable post orders. A log was established for all post orders and the CDEO will conduct an annual review for needed changes/updates.

2 / Detention & Removal / 1

2 The field office should ensure that each detainee receives a copy of the detainee handbook upon admission to the facility.

On (date), we revised the intake sheet to include a sign off receipt by the detainee when handbooks are issued. In addition, the Facility Director will ensure that the handbook is reviewed annually for any needed changes or updates.

3 / Detention & Removal / 2

3 The field office should periodically check DACS to ensure Deportation Officers and Clerks are entering proper information into DACS.

On (date), the Program Manager issued a memorandum to all Detention and Removal staff stressing the requirement and importance of updating DACS completely and accurately.

4 / Detention & Removal / 2

4 The District Director should periodically check DACS to ensure records associated with criminal aliens have alert codes.

Deportation supervisors are periodically checking DACS to ensure accuracy on entries made by Deportation Officers and Clerks. Supervisors are currently working with the districts Quality Assurance Officer to develop additional methods that can be used as checks and balances for DACS accuracy.

5 / Detention & Removal / 3

5 The field office should ensure that accepted bonds are forwarded to the Debt Management Center within 5 days.

The SDDO has provided training on policy and procedures that concern immigration bonds. Refresher training will be provided, as needed. Future deficiencies will be recorded in the appropriate job element of Employee Performance Work Plans.

Chapter/Department/Pg #

Recommendation # and Comment

Corrective Action Taken (per Draft Report)

6 / Detention & Removal / 3

6 The field office should maintain appropriate contact numbers to respond to NCIC hits.

On (date), the SDO submitted a list of contact numbers for NCIC hit to the LESC.

7/Detention & Removal / 3

7 The field office should ensure that Jail Inspections are completed timely

.

As of (date), our Jail Inspectors completed an inspection for each IGSA facilities currently in use.

8 / Detention & Removal/ 3

8 The field office should maintain more accurate records that show completed jail inspections.

A call-up system was implemented to assign and track the completion of Jail Inspections. The related subject file was properly updated with current information about each Jail Inspection.

## **Appendix 45-1.2 Sample INSpect Report**

Chapter/  
Department/  
Pg #

Recommendation # and Comment

Corrective Action Taken (per Draft Report)

1/ Adjudication/ 5

2 The District Director should issue approval stamps to officers adjudicating applications.

As of December 7, 1998, the District issued approval stamps to all District Adjudication Officers. The District also acquired extra stamps to issue to future detailees. The District instructed all District Adjudication Officers to use their own approval stamps in the action block, and sign their full names when approving applications or petitions.

1 / Adjudication / 6

5 The District Director should assign different District Adjudication Officers and/or Immigration Information Officers to adjudicate Forms I-765 and to produce EAD cards.

As of December 8, 1998, the District assigned adjudication of Forms I-765 to specific District Adjudication Officers. Immigration Information Officers assumed these duties in January 1999. Actual card production is done by the Supervisory District Adjudication Officer.

3 / Deportation / 9

6 The District Director should periodically check DACS to ensure Deportation Officers and Clerks are entering proper information into DACS.

(Corrective Action:): On December 1, 1998, the District issued a memorandum to all Detention and Deportation staff stressing the requirement and importance of updating DACS completely and accurately.

3 / Deportation/ 9

7 The District Director should periodically check DACS to ensure records associated with criminal aliens have alert codes.

Deportation supervisors are periodically checking DACS to ensure accuracy on entries made by Deportation Officers and Clerks. Supervisors are currently working with the districts Quality Assurance Officer to develop additional methods that can be used as checks and balances for DACS accuracy.

4 / Inspections / 11

8 The District Director should provide inspectors with refresher training in preparing sworn statements.

Twice every month on Friday afternoons extensive training is provided for the Inspectors on sworn statements, expedited removal provisions and all administrative proceeding involving applicants for admission. This training is on going.

Chapter/  
Department/  
Pg #

Recommendation # and Comment

Corrective Action Taken (per Draft Report)

4 / Inspections / 11

9 The District Director should establish a checklist of procedures to follow for expedited removal cases.

(In Progress) On November 27, 1998, the District instructed all inspectors to complete Form I-213, Record of Deportable/Inadmissible alien, for all adverse action cases, and place copies of Forms I-213 in the work folder and original A-File. The instruction also required inspectors to forward a copy to the Records Unit via a routing slip for entry into CIS, and stresses the importance of using the Receipts and alien Files Accountability and Control System (RAFACS) for all A-File movement.

(Action Taken) As of December 15, 1998, the District provided all inspectors at the Baltimore Washington International airport with access to NAILS. District policy requires inspectors to enter expedited removal information into NAILS within 24 hours of case completion.

4/ Inspections / 11

10 The District Director should periodically check the expedited removal process to ensure that inspectors update the appropriate automated systems.

4/ Inspections / 12

11 The District Director should obtain for inspectors refresher training on the expedited removal provisions.

Twice every month on Friday afternoons extensive training is provided for the Inspectors on sworn statements, expedited removal provisions and all administrative proceeding involving applicants for admission. This training is on going.

4 / Inspections/ 12

12 The District Director should provide guidance to inspectors on how to properly and accurately complete Forms I-94.

On December 5, 1998, the Port Director and Supervisory Inspectors completed training of all inspectors concerning the proper completion of Forms I-94.

5 / Intelligence / 13

13 The District Director should develop and execute an Intelligence Collection Plan.

An Intelligence Collection Plan has been developed and implemented (copy attached).

Chapter/  
Department/  
Pg #

Recommendation # and Comment

Corrective Action Taken (per Draft Report)

5 / Intelligence / 14

14 The District Director should implement a system for tracking formal collection taskings and requests for information received in or requested by the District Intelligence Program.

The District Intelligence Officer and his alternative developed a District Intelligence Plan that specifically addresses how information is to flow from the various programs within the district to the District Intelligence Officer. The District Intelligence Officer transmits information via cc: Mail return receipt requested to ensure receipt by proper personnel.

5 / Intelligence / 14

15 The District Director should obtain assistance from the Assistant Commissioner, Intelligence, in developing an intelligence training and orientation model for new or transferred employees in the District.

(In Process) No training is being offered to the districts to date by Headquarters or Region Intelligence at this time. Hopefully there will be training in the near future. In the meantime the District Intelligence Officer provides training and orientation for new and transferred employees in the District.

5 / Intelligence / 14

16 The District Director should construct a mailing list based upon the need to know and begin direct transmission of Forms G-392 and other intelligence products marked with return receipt by cc:Mail.

We are transmitting copies of G-392s to other districts that would benefit from the information via cc: Mail return receipt requested.

5 / Intelligence / 15

17 The District Director should request the Assistant Commissioner, Intelligence, to deliver the Power-Point training course on effective intelligence reporting and preparation and dissemination of Forms G-392.

We have requested the training. Hopefully it will be in the near future.

5 / Intelligence / 15

18 The District Director should review all Forms G-392 prepared in the District before final dissemination to verify that each of the reporting requirements is fulfilled and deficient Forms G-392 are corrected.

All Form G-392s are being reviewed by a Supervisory Immigration Inspector prior to final dissemination.

6 / Investigations / 18

20 The District Director should review Forms I-213, Record of Deportable aliens, and compare the line numbers with the narrative for accuracy prior to signing the Form I-213.

On November 24, 1998, the District issued a memorandum to all Special agents instructing them to classify all aliens identified in any criminal proceedings, but not convicted of the charge, as 518.1.

Chapter/  
Department/  
Pg #

Recommendation # and Comment

Corrective Action Taken (per Draft Report)

7/ Records / 20

21 The District Director should provide guidance on proper storage of unused A-file folders.

On November 12, 1998, the Supervisory District Adjudication Officer removed the empty A-file folders from his office and placed them in a secure, locked location.

7/ Records / 21

22 The District Director should consistently use the empty jacket function in RAFACS to account for unused A-File folders.

On November 17, 1998, the Records Supervisor provided the Investigations Unit with the necessary equipment to enter their empty A-File folders into RAFACS. Additionally, the Records Supervisor entered the empty A-file folders located in the Inspections Unit into RAFACS the same day.

7/ Records / 21

23 The District Director should conduct monthly inventories of unused A-file folders.

As of December 5, 1998, the District started performing inventories of unused a-file folders on a monthly basis.



7/ Records / 21

24 The District Director should identify all empty A-File folders throughout the District and verify their accountability in RAFACS.

Audits were conducted during INSpect Review. Files issued are now given to the sections. A day later CIS is checked to ensure all files has been charged via RAFACS to the section obtaining the files.

7/ Records / 22

25 The District Director should use a more comprehensive log to account for unused A-file folders in the Records Unit.

Log books are now being used in all programs within the district to account for unassigned files. The log book shows the date of receipt of the files. Each time a file is issued the jacket will be signed for by the person who receives it and it indicates whom the jacket was assigned.

7/ Records / 22

26 The District Director should reconcile physical inventories of unused A-File folders to RAFACS and the Records log before preparing Form G-954.

(In Process):Audit is still being conducted; we are still unable to account for 11 of the missing unassigned file jackets.

7/ Records / 22

27 The District Director should provide file creation procedures training to the Records Supervisor and Technicians.

File creation procedures have been corrected, all pertinent information is input in CIS. File jackets are being signed by the person creating the file as well as the verifier. Spot checks are now conducted (see attached SOP).

7/ Records / 22

28 The District Director should periodically check A-Files against CIS to ensure that data is accurately entered.

(In Process). An SOP is being developed and should be in place by no later than October 1, 1999.

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7 / Records / 22

30 The District Director should conduct a comprehensive file audit of the Districts A-Files.

The District reviewed the reports from the last audit and found most of the files in question were for old cases. The cases are now at the Federal Records Center. The District coordinated with Headquarters Records to batch correct the problem instead of correcting each file.

8 / Files and Forms / 24

31 The District Director should require two employees open mail with remittances.

As of December 5, 1998, the District relocated the clerks processing in-coming mail to an area in plain view of two other employees.

8 / Files and Forms / 24

32 The District Director should secure remittances when they are not immediately delivered to the collection officer.

As of December 5, 1998, the District provided a two-drawer Mosler safe to the mail area. The District secures all remittances there until receipted in the cash register.

9 / EEO / 26

33 The District Director should include a separate, critical element concerning EEO in all supervisors performance work plan.

As of December 5, 1998, the District amended two of the performance work plans to contain separate, critical elements concerning EEO. The other individual previously separated from the service.

9 / EEO / 26

34 The District Director should post proper material on all District EEO bulletin boards.

As of December 5, 1998, the District updated existing bulletin boards to contain all required information.

9 / EEO / 26

35 The District Director should post EEO information on a bulletin board accessible to applicants.

The District ordered an additional bulletin board for the main reception area. It was installed in January 1999.

10 / Facilities / 27

37 The District Director should relocate furniture and file boxes blocking emergency exits.

As of November 25, 1998, the District moved file boxes and furniture away from emergency exits; moved furniture away from fire extinguishers; replaced 16 exit sign bulbs; replaced eight ceiling tiles; and replaced 17 four-foot lights.

10 / Facilities / 27

38 The District Director should relocate the furniture blocking access to fire extinguishers.

10 / Facilities / 27

39 The District Director should replace broken or missing ceiling tiles.

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11/ Finance / 29

40 The District Director should develop and maintain a document log to control the issuance of sequential numbers to documents used in the deposit process.

As of December 4, 1998, the District developed a log to control the issuance of sequential numbers to deposit documents. The district also instructed staff to refer to the log for sequential numbering, rather than to the previous document.

11/ Finance / 29

41 The District Director should immediately review the Uncollectible check report received from the Administrative Center, Burlington, weekly.

As of December 4, 1998, the District issued specific instructions for immediate review of the weekly report. The instructions covered actions necessary to stop application processing, place documentation in A-files, update RAFACS, notify the applicant, and resume processing when the account is cleared.

11/ Finance/ 30

42 The District Director should initiate a tracking system for bad checks to measure the Districts success in stopping application processing in bad check cases and in achieving repayments.

The Districts Quality Assurance Officer is developing an automated system to track these cases. This should be in place by the end of CY 1999.

11 / Finance / 30

44 The district Director should endorse remittances at the time of acceptance.

On December 4, 1998, the District issued to all personnel who collect funds a memorandum requiring endorsement of remittances immediately upon review and acceptance.

11 / Finance / 30

45 The District Director should use a single SF-215 for daily deposits to its approved commercial bank.

On December 4, 1998, the District issued to all personnel who deposit funds a memorandum requiring use of a single SF-215 for daily deposits.

12 / Human Resources / 31

46 The District Director should establish procedures that provide for written approval of overtime before it is performed.

As of December 5, 1998, the District began using a redesigned overtime sheet that indicates justification and advance approval. Program Managers sent a memorandum to all employees informing them of the new form, and reiterating the requirement for justification and advance approval of overtime.

12/ Human Resources / 32

47 The District Director should distribute PC-TARE Audit Reports and instruct supervisors to review and sign PC-TARE Audit Reports.

PC-TARE Audit Reports are being distributed. This was discussed in the Timekeepers Meeting and is part of the meeting minutes.

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12/ Human Resources / 32

48 The District Director should reemphasize the need for supervisors to review leave error reports promptly and to direct timely corrections.

The District Director distributed a memorandum to all program managers to review leave error reports promptly and to direct timely corrections.

(copy attached)

12/ Human Resources / 32

49 The District Director should maintain copies of the corrected leave errors in time and attendance files.

Corrected leave errors are being maintained in the time and attendance files. This was discussed in the Timekeepers Meeting and is part of the meeting minutes.

13 / Procurement / 33

50 The District should establish procedures that ensure funds availability is certified before the acquisition occurs.

Funds availability is certified on all G-514s purchase orders and visa orders prior to purchase.

13 / Procurement / 33

51 The District Director should reemphasize the requirement that Contracting Officers sign procurement documents.

All copies of the purchase order are now signed in the original rather than using a stamped signature for copies.

13 / Procurement / 33

52 The District Director should establish standard operating procedures that require program offices to supply support for prices identified in requisitions.

All orders over \$2,500 on schedule are analyzed for best value by obtaining three quotes and documented. A standard operating procedure was prepared.

13 / Procurement / 34

53 The District Director should review the award schedules of its three Federal Supply Schedule vendors, select the vendor offering the Government the best value, and document the finding.

Reviews are conducted for best value from the three quotes.

13 / Procurement / 34

54 The District Director should establish and maintain a written record in purchase files that demonstrates compliance with simplified acquisition procedures.

As of December 5, 1998, the District developed a Standard Operating Procedure and related checklist. Staff will file completed checklists in the procurement folders. Also, District Contracting Officers will perform quarterly audits of procurement files and actions, and document the audits. The Deputy Assistant District Director for Administration conducted the first audit on March 3, 1999.

13/ Procurement / 34

55 The District Director should maintain copies of current blanket Purchasing Agreements on file in the District Office and at the outlying sites where orders are placed against the agreements.

As of December 5, 1998, the District had copies of the blanket purchase agreements.

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13/ Procurement / 34

56 The District Director should identify the individual(s) placing orders against the Blanket Purchasing Agreements on the Acquisition account Call Record.

On December 1, 1998, the District issued a memorandum identifying those authorized to place orders against Blanket Purchase Agreements. The memorandum also provided procedures for placing and documenting orders made.

13/ Procurement / 35

57 The District Director should provide the Administrative Center, Burlington, with the updated list of staff authorized to place orders against Blanket Purchase Agreements.

On November 24 and 25, 1998, the District requested modifications for the two active Blanket Purchase Agreement in order to update the individuals authorized to place calls.

14 / Property Mgmt/ 37

58 The District Director should establish a procedure that ensures all accountable property has a barcode label and is entered to AMIS.

All property is now being received in a central location with the exception of items such as safes where it would be impossible to transfer the property after barcoding. Periodic visits by the supply clerk to outlying locations are conducted to ensure property is barcoded.

14 / Property Mgmt / 37

60 The District Director should require all employees authorized vehicles for home-to-work use to maintain a Form G-886 and to annotate it each time the vehicle is used for home-to-work.

As of December 1, 1998, the District issued memorandums to all Investigative, Detention, and Deportation staff instructing them to annotate the Form G-886 each time a vehicle is used. This is to include vehicle usage for transportation to and from home.

15 / Security / 39

61 The District Director should review the position sensitivity and clearance levels for every employee.

(In Progress) As of December 5, 1998, the District completed review of the sensitivity levels and responsibilities of these positions and began the necessary actions to make changes.

15 / Security / 39

62 The District Director should amend the position sensitivity and clearance levels that are not commensurate with position responsibilities.

15 / Security / 39

63 The District Director should notify the Director, Administrative Center, Burlington, of any required changes to either position sensitivity or clearance levels.

15 / Security / 39

64 The District Director should require visitors to wear identification.

As of December 5, 1998, the District began to require all visitors to sign in at the Administrative Office and wear visitor badges.

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15 / Security / 39

65 The District Director should require district to display their Immigration and naturalization Service identification badges while in the District office.

On December 2, 1998, the District issued a memorandum that explained the new visitor sign-in/badge procedures, and reiterated the requirement for all employees to wear their identification while in the office.

15 / Security / 39

66 The District Director should train all personnel on the proper response to audible or signatory (lights) distress alarms.

Training on distress alarms has been deferred until we move into the new office space.

15 / Security / 39

67 The District Director should upon moving into the Districts new location obtain and install a metal detector at the entrance to waiting rooms on the 12<sup>th</sup> floor of the District building.

A metal detector is already installed at the new office space at the Fallon Federal Building and will be in the Information Waiting Room.



15 / Security / 39

68 The District Director should install a glass barrier for receptionists upon moving into the Districts new location.

All reception areas in each program will have glass barriers. These upgrades were in compliance with INS security policies.

15 / Security / 39

69 The District Director should, upon moving into the Districts new location, install additional distress alarms in the public access counter area, and the two receptionist areas.

Distress alarms are being installed in the reception areas and public access counter area in the new facility.

15 / Security / 39

70 The District Director should install an alarm that when activated, alerts authorities at the nearest Federal Protective Service Unit at the new location and the guard posted in the public access counter area.

The button will sound an alarm at the INS Security Guard Station on the first floor (main lobby). The FPS Officers are stationed in the lobby in close proximity to our guards station in case he needs assistance.

15 / Security / 40

71 The District Director should install 1 deadbolt locks, key card entries or cipher locks and wire mesh over false ceilings in limited access and secure storage areas.

The new space has wire mesh from plate to plate. We will be using the key card access system.

15 / Security / 40

72 The District Director should ensure that employees who have access to and assume responsibility for contents of secure storage areas are made aware of the physical security standards for those areas.

Employees are now aware of the retention for Form G-84, Document Receipt. Forms are being retained for two years.

15 / Security / 40

73 The District Director should maintain Forms G-84, Document Receipt, for the required two-year period.

On November 19, 1998, the Records Supervisor began maintaining Forms G-84 for all classified files.

74 & 75 NOT INCLUDED IN DRAFT

15 / Security / 41

76 The District Director should conduct a complete inventory of all security stamps.

(In Process): A complete inventory of Admission, approval and other security stamps should be completed by October 31, 1999.

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15 / Security / 41

77 The District Director should maintain a well-documented tracking system that accounts for all stamps that are transferred, retired, returned, or broken.

(In Process): The district currently maintains an automated database of all approval stamps that are transferred, reassigned, broken, etc. This will

be updated after the audit.

15 / Security / 41

78 The District Director should remind inspectors that they should not store admission and approval stamps outside the office.

The Port Director has reminded all employees of the proper storage methods for admission and approval stamps outside of the office.

15 / Security / 41

79 The District Director should establish proper record keeping procedures for security ink.

The Examinations program obtains security ink from the Inspection program. Form G-504 is utilized to transfer individual bottles of security ink. Ink is stored in the custody of Supervisory District Adjudications Officer (SDAO). SDAO has sole access to secure safe. Requisitions for ink are made through SDAO and are dispensed under his direction.

15 / Security / 41

80 The District Director should conduct periodic spot checks of inventories of stamps and ink supplies to ensure proper ownership, accountability and secure storage.

The Examinations program has yearly updates of index cards of District Adjudications Officers (DAOs) approval stamps and signatures. Random checks are made for stamp inventories in examinations and Information. Information has on secure stamp which is in the custody and stored by the Supervisory Immigration Inspections Officer (SIIO). Remaining secure stamps, ink and other secure items are inventories, distributed and stored by the SDAO.

15 / Security / 41

81 The District Director should conduct training on the proper security and storage of stamps and related materials.

The District Security Officer gives security training to all new employees, security training is provided as deemed appropriate.

16 / Legal Proceedings / 43

82 The District Counsel should update the General Electronic Management System (GEMS) as soon as files enter the Litigation Unit and upon movement within the Litigation Unit.

All staff have been retrained to enter files into GEMS upon receipt of the file and upon movement within the Litigation Section. It is noted that, at the time of the INSpect review, many files had not yet been entered in GEMS because GEMS had not been fully implemented and it was not required that all files be entered in GEMS.

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16 / Legal Proceedings / 43

83 The District Counsel should update RAFACS as soon as a file moves out of the Litigation Unit.

All staff have been retrained to make sure that all files are properly charged in RAFACS upon receipt of the file or transfer of the file from the Litigation Section.

16 / Legal Proceedings / 43

84 The District Counsel should route all files to the Records Unit for transfer out of the District.

All staff have been retrained to make sure that all files transferred out of the District are processed through the Records Section.

16 / Legal Proceedings / 43

85 The District Counsel should ensure attorneys make appropriate notes in GEMS when they keep files in their office.

All attorneys have been retrained to ensure that files in their offices are properly entered into GEMS.

16 / Legal Proceedings / 44

86 The District counsel, in coordination with the District Director, should record all final orders in DACS.

Effective November 20, 1998, the District Counsel, in agreement with the District, modified the offices procedure to route all files to the Detention and Deportation Unit. An attached memorandum reminds the Detention and Deportation Unit to forward the file to the Adjudication Unit once it completes necessary actions.

Effective November 20, 1998, the District Counsel, in agreement with the District, modified the Offices procedure to route all files to the Detention and Deportation Unit to forward the file to the Adjudication Unit once it completes necessary actions.

17 / Congressional Relations / 47

87 The District Director should meet quarterly with congressional representatives to keep them apprised of changes in INS rules, regulations, and procedures.

Quarterly meetings are now held .

18/ Misconduct Reporting / 48

88 The District Director should correctly display the official INS Complaint Poster in all district processing, holding, and public access areas.

Official complaints poster is in the Information area.

18/ Misconduct Reporting / 48

89 The District Director should make Forms I-847 readily available on request in each area displaying a poster.

Forms I-847 are now readily available upon request.