

DEPARTMENT OF HOMELAND SECURITY
Office of Inspector General

**A Review of DHS' Responsibilities
For Juvenile Aliens**



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**Homeland
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Preface

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the Homeland Security Act of 2002 (*Public Law 107-296*) by amendment to the Inspector General Act of 1978. This is one of a series of audit, inspection, and special reports prepared by our office as part of our DHS oversight responsibilities to promote economy, effectiveness, and efficiency within the department.

This report examines the treatment of juveniles who are apprehended and initially detained by DHS components. It is based on interviews with employees and officials of relevant agencies and institutions, direct observations, statistical analyses, and a review of applicable documents.

The recommendations herein have been developed to the best knowledge available to our office, and have been discussed in draft with those responsible for implementation. It is our hope that this report will result in more effective, efficient, and economical operations. We express our appreciation to all of those who contributed to the preparation of this report.

A handwritten signature in cursive script that reads "Richard L. Skinner".

Richard L. Skinner
Inspector General

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Abbreviations

ADR	Alien Detention and Removal, DRO
ANSIR	Automated Nationwide System for Immigration Review
BTS	Border and Transportation Security
CBP	Customs and Border Protection
DACS	Deportable Alien Control System
DHS	Department of Homeland Security
DOJ	Department of Justice
D&R	Office of Detention & Removal, INS
DRO	Detention and Removal Office, ICE
ENFORCE	Enforcement Case Tracking System
EOIR	Executive Office for Immigration Review, DOJ
FBI	Federal Bureau of Investigation
FLETC	Federal Law Enforcement Training Center
FOJC	Field Office Juvenile Coordinator
FY	Fiscal Year
HHS	Department of Health and Human Services
HSA	Homeland Security Act of 2002
ICE	Immigration and Customs Enforcement
IEA	Immigration Enforcement Agent
INS	Immigration and Naturalization Service
MOU	Memorandum of Understanding
OIG	Office of Inspector General
OJA	Office of Juvenile Affairs, INS
ORR	Office of Refugee Resettlement, HHS
OTM	Other Than Mexican
POE	Port of Entry
P.L.	Public Law

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Executive Summary

The implementation of the *Homeland Security Act* (HSA) on March 1, 2003, significantly reorganized federal responsibilities for juvenile aliens.¹ Before the HSA, the former Immigration and Naturalization Service (INS) was responsible for all aspects of apprehending and detaining juvenile aliens. The HSA divided those responsibilities between two separate federal departments.

In implementing the HSA, the Department of Homeland Security (DHS) assigned its juvenile-related responsibilities to the Bureaus of Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE). Both were given responsibility for apprehending, processing, and transporting juvenile aliens. ICE's Detention and Removal Office (DRO) became responsible for housing juvenile aliens who were apprehended with family members and primarily for transporting apprehended juveniles to longer-term detention facilities.

We reviewed the effectiveness of the coordination between CBP and ICE after CBP apprehends and initially holds juvenile aliens. Our review included the process by which CBP informs ICE DRO that a juvenile alien was apprehended, the process for transferring the juvenile alien to ICE DRO custody, and the effectiveness of the current system for transferring care and custody of unaccompanied juvenile aliens to the Department of Health and Human Services (HHS). In addition, we assessed the progress of relevant DHS components in implementing three open recommendations from a prior Department of Justice (DOJ) Office of the Inspector General (OIG) report.²

We concluded that DHS adhered to its responsibilities for treating apprehended juvenile aliens with dignity and concern. The department is proficient in key areas of apprehending and processing juvenile aliens, prioritizing processing and transportation of juveniles after they are apprehended, and providing appropriate information to juveniles on their legal

¹ P.L. 107-296, § 462. On November 25, 2002, President Bush signed the *Homeland Security Act of 2002* into law, thereby creating the Department of Homeland Security.

² *Unaccompanied Juveniles in INS Custody*, Department of Justice, Office of the Inspector General, I-2001-009, September 28, 2001.

rights. Generally, the department placed juvenile aliens in longer-term housing facilities in a timely manner.

While our overall assessment for this review is satisfactory, areas needing departmental attention include:

- CBP personnel generally provided adequate access to counsel for apprehended juvenile aliens. While lists of pro bono attorneys were maintained by a non-DHS agency, information on the lists given to juveniles was not consistently accurate.
- The time which juvenile aliens spent in confinement at CBP facilities varied significantly. There is no CBP-wide policy for reviewing and approving the extended holding of juveniles and for reporting these events to appropriate CBP officials.
- Accompanied juveniles (those apprehended with their families) were separated from their families due to space limitations in “family unity” shelters.
- DHS and HHS have not forged a sufficiently detailed agreement on their respective responsibilities for unaccompanied juvenile aliens.
- It is essential that DHS clearly assign the authority for overseeing the range of its responsibilities for juvenile aliens and for serving as an organizational liaison.
- Training programs delineated in the *Flores* Stipulated Settlement Agreement are insufficiently implemented and custodial records for juveniles continue to be irregularly completed and maintained.³

We are making eight recommendations to the Undersecretary, Border and Transportation Security, to improve the management of the juvenile alien program.

³ *Reno v. Flores*, 507 U.S. 292 (1993) (hereafter “*Flores*”). *Flores*, a class action lawsuit, was filed against the INS challenging the agency's arrest, processing, detention, and release of juveniles in its custody. The case involved unaccompanied minors who entered the United States illegally and were subsequently detained by the U.S. government. In August 1996, the parties to the lawsuit negotiated a settlement, known as the *Flores* Stipulated Settlement Agreement, in which the INS agreed to follow various stipulations for processing and detaining juveniles held in its custody. See Appendix D for a summary of the *Flores* Stipulated Settlement Agreement.

Background

Juvenile aliens represent a particularly vulnerable and special population. Those apprehended and detained by DHS fall into two categories: accompanied and unaccompanied. The HSA defines an unaccompanied juvenile alien as an alien who is in the United States illegally, has not attained 18 years of age, and who either has no parent or legal guardian in the United States or has no parent or legal guardian in the United States available to provide care and physical custody.⁴ An accompanied juvenile alien has a parent, legal guardian, or other immediate adult relative who is with the juvenile when he or she is apprehended.⁵

Juvenile Alien Apprehensions

CBP apprehended almost 1.9 million illegal immigrants in the United States in Fiscal Year (FY) 2004. Also, CBP reported that the 1.9 million alien apprehensions included 122,122 juveniles (6.4 percent).⁶ Of this total, 101,731 juveniles (83.3 percent) were Mexican nationals and 20,391 juveniles (16.7 percent) were Other-Than-Mexican (OTM) nationals.⁷

Most apprehensions of juvenile aliens occur in rural areas along the border with Mexico. Of the 122,122 juvenile apprehensions, the Border Patrol made 103,496 (84.7 percent) along the Southwest border. The Tucson Border Patrol sector apprehended 48,272 juvenile aliens (39.5 percent of all juvenile apprehensions) - the largest number of juvenile aliens apprehended in any Border Patrol sector. The seven Border Patrol sectors with the most juvenile alien apprehensions are all along the Southwest border.

⁴ P.L. 107-296, § 462.

⁵ Detention and Removal Officer's Field Manual, Appendix 11-4: Juvenile Protocol Manual, November 2003.

⁶ According to the ICE Director of the Office of Immigration Statistics, ICE investigators also enter data on juvenile aliens apprehended in the U.S. interior into ENFORCE. However, due to system limitations, ENFORCE does not uniformly capture the agency (CBP or ICE) which initially apprehended the juvenile.

⁷ CBP's ENFORCE system does not specifically designate whether apprehended juveniles are accompanied versus unaccompanied.

Figure 1. Seven Border Patrol Sectors with the Highest FY 2004 Juvenile Apprehensions

Border Patrol Sector	Number of Apprehensions
Tucson, AZ	48,272
McAllen, TX	13,023
El Paso, TX	12,042
Yuma, AZ	8,689
Laredo, TX	7,480
San Diego, CA	7,382
Del Rio, TX	6,608
Total	103,496

The vast majority of juveniles apprehended by CBP are not placed into immigration proceedings by DHS. In FY 2004, 103,274 juveniles (84.6 percent of all apprehended juveniles) were released back across the U.S. border to Mexico, or in rare cases to Canada. This process is called a Voluntary Return.⁸ The Border Patrol subjected 94,695 juveniles (77.5 percent of all apprehended juveniles) in FY 2004 to a Voluntary Return.⁹

Nationally, the Border Patrol apprehended 86,606 juvenile aliens in FY 2003. Border Patrol juvenile apprehensions in FY 2004 (109,285) were 26.2 percent higher than in FY 2003.

Organizational Responsibilities

- Juvenile Alien Program Under the Former INS

Prior to implementation of the HSA in March 2003, INS was the primary agency that apprehended, transported, detained, and removed juvenile aliens who were unlawfully present in the United States. Within INS, the Office of Juvenile Affairs (OJA) was responsible for the Juvenile Detention and Shelter Care Program. OJA was originally part of the INS Office of Detention and Removal (D&R) at INS Headquarters. OJA responsibilities included:

- policy planning decisions regarding juveniles;
- developing juvenile facility contracts and services with juvenile housing facilities;
- oversight of those juvenile facilities;
- developing regulations to reflect INS policy relating to unaccompanied juveniles;
- providing operational oversight to Field Office Juvenile Coordinators;

⁸ The Voluntary Return process is discussed in detail later in this section.

⁹ CBP officers at POEs conducted Voluntary Returns on 8,579 juveniles in FY 2004.

-
- training INS personnel on the proper handling of unaccompanied juveniles; and
 - coordinating transportation with INS D&R for transfers, placements, and removals of juvenile aliens.

The INS National Juvenile Coordinator, who was the head of OJA, directed the INS Juvenile program. As of December 2002, OJA had an operating budget of \$31.6 million and ten staff assigned to INS headquarters, including an office director and the National Juvenile Coordinator.¹⁰

The National Juvenile Coordinator within OJA had direct authority over INS field personnel in decisions related to the proper handling of juveniles. These decisions included the placement of juveniles in INS-funded facilities, their transfer to other facilities, and their release from INS custody.¹¹ Three regional juvenile coordinators, who reported organizationally to the respective regional heads of D&R, were responsible for overseeing and monitoring 33 district juvenile coordinators in their respective regions. In addition to reporting to the regional heads of D&R, the 33 district juvenile coordinators and the three regional juvenile coordinators also reported to the National Juvenile Coordinator regarding placements, transfers, and releases of juveniles. D&R was responsible for both accompanied and unaccompanied juveniles.

The National Juvenile Coordinator and the regional juvenile coordinators managed the placement and transportation of juvenile aliens between INS districts and regions. The district juvenile coordinators were responsible for juveniles in custody in their jurisdictions, including the respective Border Patrol sectors.

Following criticism of the program's operation, the INS Commissioner transferred OJA from D&R to the INS Commissioner's office in October 2002. This elevation was intended to provide OJA with high-level, direct authority over all operations of INS' juvenile program and increased accountability for the care and treatment of juveniles.

- Reorganization of the Juvenile Alien Program after the HSA

With the implementation of the HSA on March 1, 2003, responsibility for apprehending and providing initial care and detention for juvenile aliens was split between CBP and ICE. Both have authority for making arrests, completing administrative processing, and making initial enforcement

¹⁰ *Office of Juvenile Affairs Operating Budget*, December 2002.

¹¹ Pogash, John, *Unaccompanied Alien Children in Federal Custody*, Presentation to the Coordinating Council on Juvenile Justice and Delinquency Prevention, December 3, 2004.

determinations, such as repatriations and releases to family members.¹² Both transport juvenile aliens after processing at CBP or ICE facilities to approved juvenile facilities, too.

The implementation of the HSA transferred responsibility for the care and housing of unaccompanied juvenile aliens to the Office of Refugee Resettlement (ORR), an HHS agency. ORR became responsible for the care and placement of unaccompanied juveniles, including facility placement decisions, releases to a sponsor pending immigration proceedings, and transportation of juveniles for medical reasons, court appearances, or transfers to subsequent facilities. In addition, DRO juvenile program funds for transporting and detaining unaccompanied juvenile aliens were transferred to ORR.

- CBP and ICE Responsibilities after the HSA

CBP apprehends and processes almost all juvenile aliens. Border Patrol agents stationed at Border Patrol stations and CBP officers at Ports of Entry (POEs) apprehend and process juvenile aliens. CBP facilities are designed to hold juveniles on a short-term basis during the processing phase. In addition, Border Patrol agents and CBP officers regularly transport juvenile aliens from the CBP facility after processing to subsequent ICE DRO or ORR longer-term detention facilities.

ICE has authority to arrest juvenile aliens inside the United States who violate U.S. immigration laws. ICE DRO generally is responsible for transporting juvenile aliens from CBP facilities, such as a POE, to initial DRO or ORR facilities. In addition, ICE DRO removes juvenile aliens with expedited or adjudicated removal orders from the United States.

While ICE DRO has a National Juvenile Coordinator, it does not have a dedicated juvenile program office similar to the OJA under the former INS Commissioner. The National Juvenile Coordinator develops juvenile policy and serves as a liaison with other DHS components, ORR, and volunteer agencies. The National Juvenile Coordinator is relegated to a position within DRO.

DRO has 21 Field Offices, each with a Field Office Juvenile Coordinator (FOJC) who serves as a local expert on the handling of juvenile issues by DHS and assists with the initial placement of apprehended juvenile aliens.

¹² Ibid, p. 21.

- ORR Responsibilities after the HSA

ORR was assigned the responsibility for caring for and housing unaccompanied juvenile aliens who were detained pending resolution of immigration cases enforced by DHS. These functions include facility placement decisions; oversight and monitoring of facility contracts for housing unaccompanied juveniles; running immigration and criminal checks on potential sponsors of juveniles to whom juveniles may be released; and, transportation of juveniles for medical care, court appearances, and facility transfers. All these functions formerly were DRO responsibilities under INS.

According to the DRO National Juvenile Coordinator and ORR's director of the Division of Unaccompanied Children's Services, the organizational transition of the INS care and custody program for juvenile aliens to ORR occurred incrementally until completion in August 2004. ORR was authorized \$52.8 million for its unaccompanied alien children program for FY 2004.¹³

ORR maintains and oversees contracts with for profit and non-profit agencies that run juvenile facilities. As of October 2004, ORR oversaw 41 facilities nationwide for unaccompanied juvenile aliens, with a total dedicated capacity of approximately 920 beds.¹⁴ The facilities provide housing to unaccompanied juveniles at different levels of security restrictions. According to ORR officials, it had over 800 unaccompanied juveniles in custody in October 2004. ORR officials also said that the average time in FY 2003 for a juvenile in ORR custody was 45 days.

Apprehending, Processing, Transporting, and Detaining Juvenile Aliens

The process for apprehending, processing, transporting, and detaining juvenile aliens is complex and involves multiple U.S. agencies within as well as external to DHS. In almost all cases, Border Patrol agents and CBP officers stationed on the border and at established POEs apprehend unlawful juvenile aliens. However, ICE investigators, the Federal Bureau of Investigation (FBI), the Coast Guard, or any state or local law enforcement officer may apprehend juvenile aliens. Depending on the location of apprehension, CBP or ICE processes the apprehended juvenile for immigration violations.

When a juvenile alien is apprehended in a rural area, Border Patrol agents transport the juvenile to the nearest Border Patrol station for processing.

¹³ *Budget of the United States Government*, Unaccompanied Alien Children, Department of Health and Human Services, Fiscal Year 2005.

¹⁴ As of October 2004.

Apprehensions of juveniles at POEs do not require transportation because the juvenile is already at a CBP processing facility. The processing includes interviewing to determine the juvenile's name, age, citizenship, whether the juvenile is accompanied or unaccompanied, and other information; completing necessary immigration paperwork, such as the Forms I-213 and I-770;¹⁵ and, performing necessary systems checks in U.S. government immigration and criminal databases.

When immigration processing is completed and CBP establishes that a juvenile alien is unlawfully present in or is inadmissible to the United States, CBP determines whether the juvenile can be voluntarily returned to the cross-border country, released on bond into the custody of a sponsor pending removal proceedings, or must be detained. A qualified sponsor is, in order of preference: a parent, a legal guardian, or an adult relative such as a brother, sister, aunt, uncle, or grandparent.¹⁶

CBP can offer the option of choosing a Voluntary Return or a Withdrawal of Application for Admission, if eligible. Voluntary Returns are performed through a POE after a juvenile is apprehended by the Border Patrol on the border near the POE. If the juvenile is from an area near the border, CBP informs the local consular office of the juvenile's apprehension. After the consular representative confirms that the juvenile is a citizen of the cross-border country, CBP transports the juvenile and the consular representative to the U.S. POE nearest the juvenile's home in the cross-border country. Generally, accompanied juveniles are returned with their families, while unaccompanied juveniles are turned over to the immigration authorities of their cross-border country.

If the juvenile is to be detained in U.S. custody after apprehension, officials at the CBP facility contact the DRO FOJC in the DRO field office with jurisdiction. For example, a Border Patrol agent at the station in Campo, CA would contact the FOJC at the San Diego DRO Field Office.

If the apprehended juvenile is unaccompanied, the FOJC contacts ORR in Washington, DC to request a bed in an appropriate ORR facility. ORR determines a placement location in an ORR facility with available bed space and informs the FOJC of the placement facility. DRO personnel, such as Immigration Enforcement agents (IEAs), generally transport the juvenile to the ORR facility. These transports can be interstate, from either the CBP facility or DRO field office to the ORR facility. Custody of the juvenile alien transfers from DHS to ORR upon the juvenile's physical delivery to the ORR

¹⁵ Form I-213 is the Record of Deportable/Inadmissible Alien. The I-770 is the Notice of Rights and Request for Disposition.

¹⁶ Detention and Removal Officer's Field Manual, Appendix 11-4: Juvenile Protocol Manual, November 2003.

facility. While ORR is responsible for transporting juveniles in its custody to immigration hearings, DRO is responsible for monitoring the juveniles' immigration cases and, if necessary, for removing the juveniles from the United States.

Occasionally, adverse weather or flight schedules may delay a transfer. When that happens, DRO temporarily houses the juvenile in a standby facility until the transfer to the ORR facility can be completed.

The following diagram depicts the general flow of the apprehension, processing, transportation, and detention process for juvenile aliens.

Results of Review

Apprehension and Immigration Processing of Juvenile Aliens

Border Patrol agents and CBP officers are responsible for apprehending and processing almost all unlawful juvenile aliens who are arrested in the border area or who attempt to enter the United States. During immigration processing, CBP personnel obtain the juvenile's biographical information, perform immigration record checks on all juveniles, and serve relevant documentation on juveniles placed in removal proceedings. Processing of juveniles must comply with *Flores*, a case that involved unaccompanied juveniles who entered the United States illegally and were subsequently detained by the U.S. government.¹⁷ Juveniles are the first priority for processing by CBP, taking precedence over adult aliens.

This section covers providing juvenile aliens with access to legal counsel and CBP's attentiveness to the limits for the length of time that juveniles can spend in CBP facilities.

Juveniles' Access to Legal Counsel

The *Flores* settlement requires that juvenile aliens receive paperwork during processing that adult aliens do not receive, most notably Form I-770, the Notice of Rights and Request for Disposition.¹⁸ Pursuant to *Flores*, the Form I-770 informs juveniles of their rights during the initial processing interview, usually conducted by CBP. The I-770 allows juveniles to request, if eligible, more streamlined ways to resolve their immigration cases and to be returned to their native country. These options include accepting a voluntary departure, or accepting a Voluntary Return for Mexican national or Canadian national juveniles. According to *Flores*, juveniles who are under 14 years of age, or are unable to understand the Form I-770, must have the form explained to them in a language and manner they can understand.

Border Patrol agents and CBP officers are instructed to provide juvenile aliens who are placed into immigration proceedings with a list of free legal service providers in the jurisdiction where they are apprehended. According to both the Juvenile Protocol Manual and *Flores*, "... juveniles are to be provided legal services information regarding the availability of free legal assistance, [and] the right to be represented by counsel at no expense to the [U.S.] government." While the lists of free legal service providers are maintained

¹⁷ See Appendix D for a summary of *Flores*.

¹⁸ See Appendix D.

and disseminated by the Executive Office of Immigration Review (EOIR), a component of the Department of Justice (DOJ),¹⁹ these lists should be provided by the CBP facility where the juvenile is processed.

We sought to determine whether juvenile aliens received appropriate forms apprising them of their legal rights in the United States; were informed about obtaining an immigration attorney; and, were allowed access to telephones for calls to attorneys, parents, or the appropriate consular offices.

Apprehended juvenile aliens generally receive their lists of free legal services providers while being processed at Border Patrol stations and POEs. However, the contact information on these lists is not consistently accurate. We reviewed the lists of free legal services providers that are maintained by EOIR and given to apprehended juveniles in the custody of the Border Patrol's Detroit, San Diego, and Tucson sectors. Of the 29 attorneys and legal organizations who we attempted to contact, eight (27.6 percent) do not represent apprehended juveniles in removal proceedings. The phone numbers of three others were not in service; we were unable to contact four others despite repeated attempts.

In our interviews, all CBP and DRO personnel were aware that juveniles were to be given the Form I-770, given the free legal services lists, and permitted to make phone calls for legal counsel, to relatives, or to their consulates. The Form I-770 and legal services lists were consistently available in English and Spanish. However, we did not determine to what extent they were available in other languages. At the alien detention facility at the Tucson Border Patrol sector headquarters, we observed a juvenile using the phone, alone in a separate room in view of the Border Patrol agents. The juvenile was afforded privacy behind a glass partition.

We recommend that the Undersecretary, Border and Transportation Security:

Recommendation #1: Formally request that EOIR ensure that the lists of free legal services providers are current and accurate. Updated lists should be distributed on a regular basis to all Border Patrol stations and POEs.

Varying Conditions of Confinement at CBP Facilities

The conditions in which apprehended juvenile aliens are held vary significantly depending on the CBP facility. There was no evidence that any CBP facility was in violation of *Flores*. Moreover, during our field

¹⁹ Code of Federal Regulations, Title 8, Section 1003.

interviews, CBP personnel demonstrated an effective knowledge of how to treat juveniles during apprehension, processing, and initial holding. They recognize that handling juveniles requires special care and attention. At the JFK POE, CBP officers purchase baby formula themselves. The Tucson Border Patrol station has supplies of drinks, packaged snacks, and canned goods that are distributed to juveniles upon their arrival. Some Border Patrol and POE facilities had televisions and VCRs available for children, too.

However, the variations in physical facilities are sufficient to merit concern. Marginal or limited facilities impose greater responsibilities on the CBP facility's staff to achieve sufficient separation, supervision, and monitoring of juveniles.

We visited 13 CBP facilities in which juvenile aliens were held in FY 2004. Below is a description of the relevant conditions at each CBP facility we visited.

Figure 2. Separation and Monitoring of Juvenile Aliens at 13 CBP Facilities

CBP Facility Name	Location (Sector)	Separation	Monitoring
Port Huron Border Patrol Station	Maryville, MI (Detroit)	There is one small holding cell, making it difficult to separate juveniles from adult aliens.	The door to the holding cell is a chain-link fence, but there is obstructed monitoring of detained aliens.
Trenton Border Patrol Station	Trenton, MI (Detroit)	There are two small holding cells for separating aliens by both gender and age. This makes it difficult to separate juveniles from adults.	The two cells are viewed through a camera mounted in a corner at the top of the wall, and a vertical window in the door.
JFK International Airport POE	Jamaica, NY	There is a separate, dedicated juvenile holding room that enables separation of juveniles.	While the door to the separate juvenile room was open, the control area at the back of the secondary inspections room does not provide direct views into the room.
Nogales POE	Nogales, AZ	Juveniles (unaccompanied and accompanied) waited unrestrained in an L-shaped section of chairs in front of a CBP processing desk.	Juveniles in the holding area were supervised directly by CBP personnel.
Detroit Border Patrol Station	Detroit, MI (Detroit)	Unaccompanied juveniles are isolated. Accompanied juveniles are kept with parents in separate, designated holding rooms.	Juveniles are monitored and in full view of Border Patrol agents.

Blue Water Bridge POE	Port Huron, MI	This POE facility has two detention rooms in which juveniles are held. Only one juvenile is held in each cell unless accompanied by family members.	Each cell has a camera, mounted in a corner at the top of the wall and a vertical window in the door for monitoring.
Chula Vista Border Patrol Station	San Diego, CA (San Diego)	Unaccompanied juveniles are held separately in one of the large rooms or on a bench in the processing area.	Holding cells have windows in the doors for monitoring detained juveniles.
Brownfield Border Patrol Station	San Diego, CA (San Diego)	Separation is easily accomplished because the station has numerous cells for juveniles. A magnet reading "JUVENILE" is placed on the door of the cell when necessary.	Agents in the control room overlook the processing area and can see all of the holding cells. Closed circuit televisions allow agents in the control room to monitor activity in the holding cells and processing areas.
Campo Border Patrol Station	Campo, CA (San Diego)	The facility has cells to house juveniles as necessary. Juveniles are separated immediately from other aliens but are kept with their families if accompanied.	Each cell has a row of windows in the wall to allow for visual monitoring.
San Ysidro POE	San Ysidro, CA	Unaccompanied juveniles are held separately. Accompanied juveniles are kept with parents in separate, designated holding cells.	Holding cells have windows in the doors for monitoring detained juveniles.
Naco Border Patrol Station	Bisbee, AZ (Tucson)	Unaccompanied juveniles are separated into a designated cell. Mothers may share cells with their juveniles.	Holding cells have windows in the doors for monitoring detained juveniles.
Nogales Border Patrol Station	Nogales, AZ (Tucson)	There are two cells - one for males and one for females - for unaccompanied juveniles.	The juveniles' cells are monitored from the control room, which overlooks the processing area and holding cells. There are three monitors for the closed circuit television cameras in the processing area and holding cells.
Tucson Border Patrol Station	Tucson, AZ (Tucson)	There are two cells for unaccompanied juveniles (one for males and one for females). Accompanied juveniles are kept with parents in separate holding cells.	All cells are monitored in the control room using closed circuit cameras.

San Ysidro POE	San Ysidro, CA		Unaccompanied juveniles are held separately. Accompanied juveniles are kept with parents in separate, designated holding cells.	Holding cells have windows in the doors for monitoring detained juveniles.
Naco Border Patrol Station	Bisbee, AZ (Tucson)	11,153	Unaccompanied juveniles are separated into a designated cell. Mothers may share cells with their juveniles.	Holding cells have windows in the doors for monitoring detained juveniles.
Nogales Border Patrol Station	Nogales, AZ (Tucson)	7,194	There are two cells - one for males and one for females - for unaccompanied juveniles.	The juveniles' cells are monitored from the control room, which overlooks the processing area and holding cells. There are three monitors for the closed circuit television cameras in the processing area and holding cells.
Tucson Border Patrol Station	Tucson, AZ (Tucson)	5,855	There are two cells for unaccompanied juveniles (one for males and one for females). Accompanied juveniles are kept with parents in separate holding cells.	All cells are monitored in the control room using closed circuit cameras.

CBP can overcome limitations in its facilities but sometimes at the cost of diverting personnel from other duties. CBP should ensure that expanding juvenile holding capabilities is considered whenever it initiates new construction or renovations of CBP facilities.

Juveniles' Time in DHS Custody

There are inconsistencies in meeting the requirement to transfer accompanied and unaccompanied detained juveniles to longer-term DRO or ORR detention facilities within the 3-5 day limit imposed by *Flores*.²⁰ In addition, juveniles

²⁰ According to *Flores*, a juvenile alien in DHS custody must be placed in an appropriate juvenile facility within 3 days (72 hours) from when CBP or ICE assumes custody. CBP and ICE consider the 3-day standard in terms of 72 hours for the time in hours that elapses between apprehension and longer-term placement, rather than as a calendar day. DHS has

were held at CBP facilities for over 24 hours, which exceeds the maximum CBP guideline for holding a juvenile. The cumulative time a juvenile may spend in the custody of CBP before placement in a longer-term DRO or ORR detention facility includes time required for transportation from a possibly remote apprehension site to the CBP processing facility, short-term holding at the processing facility, and transportation to the longer-term detention facility.²¹ The ability to comply with the 3-5 day requirement begins with expeditious processing by CBP.

CBP policies allow it to hold apprehended juvenile aliens for a maximum of 24 hours at Border Patrol or POE facilities. CBP officials confirmed that the Border Patrol has implemented a 12-hour maximum as a guideline for holding juveniles at Border Patrol stations.²² Apprehended juveniles, as a rule, may not be held at CBP POEs for longer than 24 hours.²³

Juvenile aliens apprehended in the Border Patrol sectors and POEs we visited sometimes were held for longer than 24 hours. These juveniles usually were held for longer than 24 hours to allow for appropriate bed space to be located and transportation to be arranged. We examined the apprehension, processing, and transportation data in the A files²⁴ for 131 juveniles who were apprehended and processed at the field sites we visited.²⁵ CBP processed juveniles within 24 hours from when they were apprehended.²⁶

We analyzed the A files of 94 juveniles that contained sufficient data on dates of apprehension by CBP and dates they were released or transported from the initial CBP facilities following completion of processing.²⁷ Our analysis

a maximum of five days to place the juvenile in a longer-term detention facility if the juvenile was apprehended in an area without bed space in a DRO-approved facility (for accompanied juveniles) or in an ORR-approved facility (for unaccompanied juveniles).

²¹ Detention and Removal Officer's Field Manual, Appendix 11-4: Juvenile Protocol Manual, November 2003.

According to CBP officials, even though a separate juvenile manual tailored for CBP personnel does not exist, the current Juvenile Protocol Manual is applicable to CBP.

²² INS Detention Standard, *Hold Rooms in Detention Facilities*, September 20, 2000. These Border Patrol standards do not address the total time a juvenile can be held at Border Patrol stations because this standard is for "unprocessed detainees."

²³ *Secure Detention Procedures at Ports of Entry*, March 9, 2004. Although the Border Patrol has a 12-hour maximum guideline for holding juveniles at Border Patrol stations, we used the highest CBP guideline of 24 hours for our analysis of CBP's holding of juveniles at both POEs and Border Patrol stations.

²⁴ Alien files, also known as A files, are the central repositories for immigration information on individual aliens in the United States.

²⁵ Of the 174 A files, 131 files contained sufficient data specifically on processing dates and were for juveniles apprehended within our field sites.

²⁶ Processing of juveniles includes interviewing the juvenile, completing necessary immigration paperwork, and performing necessary systems checks.

²⁷ Of the 174 A files, only 94 files contained sufficient data on dates of release from CBP facilities and when juveniles were transported from those facilities.

determined that 33 juveniles out of 94 (35.1 percent) were held for over 24 hours at the initial CBP processing facility.

CBP personnel know the rules concerning the maximum lengths of time that juvenile aliens can spend in CBP facilities. Overall, 39 of the 43 (90.7 percent) line personnel we interviewed at CBP facilities were aware of the maximum times. Others deferred to supervisors for information on requirements for processing juveniles.

CBP officials at the Border Patrol stations and POEs we visited acknowledged various circumstances that caused juveniles to be held for more than 24 hours at their facilities. These circumstances were similar for both Border Patrol stations and POEs, and include:

- Finding appropriate bed space outside of the Border Patrol sector or region. This reason was given at the Detroit (neither ORR nor DRO has any juvenile facilities in the Detroit area)²⁸ and San Diego Border Patrol sectors, and at the JFK and San Ysidro POEs.
- Waiting for appropriate modes of transportation by CBP or DRO. This reason was given at the San Diego Border Patrol sector, and the JFK (waiting for a return flight to disembark) and San Ysidro POEs.
- Waiting for inclement weather to abate. This reason was given at the JFK POE.
- Determining that an accompanying parent is a criminal alien and is held for prosecution. This reason was given at the Tucson Border Patrol sector.
- Finding a secure placement facility for a juvenile with a criminal history. This reason was given at the Detroit Border Patrol sector.

At the time of our review, the Border Patrol did not have any policy that dictated the process for reviewing and approving decisions to hold juvenile aliens at Border Patrol stations for more than 24 hours.²⁹

For a more complete analysis of the total time a juvenile alien spends in DHS custody, we reviewed relevant data, from apprehension through placement in a longer-term DRO or ORR facility, that were contained in the Deportable

²⁸ When the Detroit Border Patrol sector has to hold juveniles for more than 24 hours, Border Patrol agents transport and hold juveniles in temporary housing in various hotels near the Border Patrol stations.

²⁹ CBP has a policy for reviewing and approving the holding of juveniles for more than 24 hours that only applies to POE facilities, as opposed to Border Patrol facilities. *Secure Detention Procedures at Ports of Entry*, March 9, 2004.

Alien Control System (DACS).³⁰ According to the DACS data, 1,857 juvenile aliens were detained by DRO in FY 2004 and were subsequently placed in a longer-term facility.³¹ Our analysis showed that 224 (12.1 percent) of the 1,857 juveniles were held longer than five days before placement in a longer-term detention facility. According to the DACS data, these lengths of time ranged from 6 to 225 days.³² The records did not reflect the reasons for the delays or who approved them.³³

To promote DHS' responsibility to process and transport juvenile aliens in a timely manner, all CBP personnel who have contact with juveniles need to know the relevant time requirements, the approved reasons for exceeding them, the appropriate officials who should be notified, and the officials with authority to approve the exceeding of the guidelines.

We recommend that the Undersecretary, Border and Transportation Security:

Recommendation #2: Formulate and disseminate official policies, applying to all CBP facilities that hold juvenile aliens, which stipulate the exceptions to the time guidelines on holding juveniles; the deadlines and formats for notification; and, specific officials who are authorized to approve extensions.

Longer-Term Detention of Juvenile Aliens

DRO is primarily responsible for transporting apprehended juvenile aliens from CBP facilities to longer-term detention facilities overseen by DRO or ORR. The former INS' policy for escorts governs DHS policy for transporting and escorting juvenile aliens.³⁴ CBP and ICE escort juveniles using detention vans and buses. Escorts of unaccompanied juveniles require a minimum of one ICE or CBP employee and an employee of the same gender is required for one juvenile. Two employees are required for a group of two to five juveniles and each additional group of five juveniles requires an

³⁰ DACS is a mainframe system that tracks the status of illegal aliens, including juvenile aliens, who are in removal proceedings. The system provides an automated database that assists in the deportation or detention of aliens in accordance with immigration and nationality laws. It also serves as a docket and control system concerning the status and disposition of deportable aliens.

³¹ We analyzed data for 1,857 juvenile aliens apprehended and then detained nationwide in FY 2004. These data were compiled from DACS data, provided by DRO in May 2005.

³² We also found 17 juvenile aliens, according to the DACS data, for whom dates for entering the longer-term detention facility were before their apprehension dates. These 17 records were not included in this analysis.

³³ According to a DRO official, delays in placing juveniles in longer-term facilities occur for reasons such as the juvenile initially gives inaccurate biographical data to apprehending officers; initially claims to be an adult; has a medical condition; or, may be a witness for an investigation.

³⁴ *Enforcement Standard: Escorts*, Deportation Officer's Field Manual, August 29, 2002.

additional employee. *Flores* stipulates that unaccompanied juveniles apprehended by DHS “should not be transported... in vehicles with detained adults” unless specific circumstances apply.³⁵ We did not receive assurances that a female DHS employee always escorts a single female juvenile. However, CBP line personnel explained that they follow specific escort procedures, including reporting the starting and ending times and mileage incurred during the escort.

ICE is currently under a hiring freeze that began on April 2, 2004, and will remain in effect until further notice.³⁶ With few exceptions, ICE has been unable to hire new employees and cannot fill vacancies when employees leave current ICE positions. Transporting juvenile aliens to different jurisdictions requires intensive DRO workforce resources that are not increasing concurrently with national increases in juvenile apprehensions.³⁷ Therefore, CBP personnel regularly supplement DRO transportation operations, moving juveniles from the CBP facility after processing to subsequent DRO or ORR detention facilities.

DRO is responsible for housing accompanied juvenile aliens, while ORR is responsible for housing unaccompanied juvenile aliens pending the resolution of immigration proceedings. DRO attempts to keep families together by finding available space in a family shelter. However, on occasion, such as when criminal charges are filed against the parent or bed space is not available in a family shelter, DRO is unable to keep the juvenile with the adult relative. In these instances, the juvenile is separated from the adult relative and is treated as an unaccompanied juvenile under ORR’s jurisdiction.

Need for Additional Family Shelters

Juvenile aliens who were accompanied when originally apprehended can become unaccompanied juveniles because of a lack of appropriate detention facilities. In these situations, accompanied juveniles, regardless of age, are separated from their family members because longer-term facilities are not readily available to accommodate the family. Juveniles ranging from babies to teenagers are transported to facilities without their parents. Separating juveniles from their family increases the risk in housing a particularly

³⁵ *Flores*, Stipulated Settlement Agreement, August 12, 1996. Examples of these circumstances include when juveniles are transported from the apprehension location to a CBP facility or when separate transportation of juvenile and adult aliens is “impractical.”

³⁶ *Hiring Freeze Guidance*, U.S. Immigration and Customs Enforcement, 2004.

³⁷ According to CBP officials, Border Patrol apprehensions of juvenile aliens in FY 2004 were 26.2 percent higher than juvenile apprehensions in FY 2003.

vulnerable alien population and contradicts DHS' priority to keep juveniles with their families.³⁸

The Phoenix FOJC said that there is no facility in the Phoenix area that can accommodate apprehended families with juvenile aliens (known as a "family unity" shelter). Phoenix DRO oversees detention and removals for juvenile aliens for the Tucson Border Patrol sector, which apprehended the most juvenile aliens - 48,272 - of any Border Patrol sector in FY 2004.

We reviewed the A files for seven accompanied juveniles who were apprehended and detained in the Tucson area. Six of these accompanied juveniles were detained in ORR facilities in the Phoenix area.³⁹ All six of these accompanied juveniles were separated from their families.

There is no facility to house accompanied juvenile aliens with their family members in the New York area.⁴⁰ Prior to August 2004, the New York DRO usually transported juveniles to the ORR facility in Leesport, PA (outside of Philadelphia, PA) that housed unaccompanied juvenile aliens.⁴¹ During the time of our review, accompanied juveniles apprehended at the JFK POE generally were separated from their families and were sent as unaccompanied juveniles to ORR facilities in Chicago, IL, Miami, FL, and Texas.

³⁸ Detention and Removal Officer's Field Manual, Appendix 11-4: Juvenile Protocol Manual, November 2003.

³⁹ We could not find detention facility information for one juvenile alien.

⁴⁰ We determined that there is no facility to house accompanied juvenile aliens with their family members in the Detroit area, too.

⁴¹ According to the DRO National Juvenile Coordinator, ORR terminated the facility contract with the Leesport, PA juvenile facility in August 2004.

Cases

- Border Patrol agents apprehended a 12-year old juvenile alien with his mother near the POE at Douglas, AZ. The juvenile was transported to an ORR facility in Phoenix approximately two days after apprehension. The ORR facility in which the juvenile was detained does not accommodate adult aliens. His mother was taken to and detained at the DRO Florence Service Processing Center in Florence, AZ.
- CBP apprehended an 11-year old juvenile at the JFK POE. Accompanied by his aunt, the juvenile was apprehended and processed the same day at the POE. He was transferred to an ORR facility in Chicago, IL that does not accommodate family members of apprehended juvenile aliens.

The San Diego FOJC said that an ORR facility in San Diego can hold the mother of an accompanied juvenile, but fathers of accompanied juveniles are transported to a separate California facility without the juvenile. A juvenile traveling with a single male parent becomes an unaccompanied juvenile, is separated from the father, and is subsequently transferred to ORR.

We recommend that the Undersecretary, Border and Transportation Security:

Recommendation #3: Consider the costs and benefits for DRO to obtain additional bed space in facilities with family unity capacity. If determined to be beneficial, evaluate and determine the most advantageous locations for family unity facilities based on factors including volume of juvenile apprehensions and proximity to border areas or POEs.

Placement Determinations for Unaccompanied Juveniles

The placement determination process contributes to delays in transferring unaccompanied juvenile aliens from a CBP processing facility or DRO detention facility to an ORR longer-term placement facility. Additionally, the process leads to juvenile aliens being dispersed across the United States. Juveniles are transferred frequently to initial longer-term facilities that are not in the local geographic area of their apprehension. For example, a DRO agent in the San Diego Field Office said that he has transported juveniles to facilities in Miami, Phoenix, and El Paso.

After an apprehension, CBP notifies the respective DRO FOJC that an unaccompanied juvenile alien has to be detained pending immigration proceedings. The FOJC provides biographical, behavioral, and apprehension information to ORR for its use in determining the appropriate type of facility in which to house the juvenile. The FOJC request to ORR is a critical step in transferring an unaccompanied juvenile to an appropriate facility within 3-5 days, pursuant to *Flores*.

After the initial FOJC contact, ORR determines which ORR facilities have available bed space and are an appropriate placement location for the juvenile alien. Once the facility is determined, ORR provides that information to the FOJC who, in turn, notifies CBP or DRO of the location and makes arrangements to transport the unaccompanied juvenile. The process of identifying an ORR facility usually takes only a few hours. However, any delay by ORR extends the time that a juvenile spends in temporary holding conditions at the apprehension site.

While DRO may request that an unaccompanied juvenile alien be placed at a specific facility geographically close to where the juvenile was apprehended, ORR may decide to place the juvenile in an ORR facility much farther away. For example, ORR has placed juveniles apprehended in the Tucson Border Patrol sector in facilities in Miami, Atlanta, and Washington state.

The geographic dispersion of juveniles is especially acute in areas that have no applicable DRO or ORR facilities, such as Detroit and New York. ORR, as of October 2004, had 41 facilities nationwide. Twenty-seven of these facilities are located in states on the Southwest border that have the highest volume of juvenile alien apprehensions. However, these facilities are mostly inland away from the border and the associated Border Patrol stations.

DRO must expend limited workforce resources for interstate transportation of juvenile aliens to ORR facilities. Our analysis showed that 364 (19.6 percent) of the 1,857 juvenile aliens detained by DRO in FY 2004 were held in an initial longer-term facility in a different DRO Field Office jurisdiction or state from where they were initially apprehended.⁴²

When DRO has difficulty making travel arrangements, especially scheduling flights to distant ORR facilities, DRO may be required to place the juvenile alien in a temporary detention facility. In some locations, such as Detroit and New York, this has resulted in temporarily housing juveniles in hotel rooms near the Border Patrol stations or JFK International airport.

⁴² We analyzed data for juvenile aliens apprehended and then detained nationwide in FY 2004. These data were compiled from DACS data, provided by DRO in May 2005.

We recommend that the Undersecretary, Border and Transportation Security:

Recommendation #4: Propose to ORR that ORR and DRO jointly evaluate apprehension rates by geographic area and provide adequate bed space near significant areas of apprehensions in order to minimize DHS initial interstate transfers of unaccompanied juveniles.

DHS Management and Oversight of Juvenile Alien Responsibilities

The HSA profoundly changed the system for apprehending, transporting, and detaining juvenile aliens. Where a single organization once was responsible for juveniles, there are now two responsible federal departments, DHS and HHS. Within DHS, responsibilities for juveniles are split between two major components, CBP and ICE.

DHS and HHS have failed to delineate clearly their respective organizational functions regarding unaccompanied juvenile aliens who are apprehended, transported, and initially detained by DHS - but who are subsequently transferred to ORR. In addition, the responsibilities within DHS for program oversight of juveniles require further definition.

Delineation of Interagency Juvenile Program Responsibilities

DRO and ORR have contrasting organizational missions.⁴³ DRO seeks to ensure “the departure from the United States of all removable aliens” through enforcement of U.S. immigration laws.⁴⁴ Conversely, ORR directs programs to help refugees and aliens, including juveniles, with “domestic refugee and entrant resettlement assistance.” ORR’s mission is to assist refugees and aliens in establishing “a new life that is founded on the dignity of economic self-support.”⁴⁵ Harmonizing these differing missions through clearer delineation of program responsibilities would define ORR’s obligations to abide by applicable immigration laws governing the cases of juvenile aliens held in ORR facilities.

In March 2003, the HSA divided immigration functions related to unaccompanied juvenile aliens between DHS and HHS. However, ORR was unable to immediately assume these new statutory responsibilities. For example, ORR was initially unable to transport unaccompanied juveniles to court, medical facilities, or other ORR facilities. By agreement between DHS

⁴³ The current responsible DHS component is DRO. The current responsible HHS component is ORR.

⁴⁴ *ENDGAME: Office of Detention and Removal Strategic Plan, 2003-2012*, Immigration and Customs Enforcement, June 27, 2003.

⁴⁵ *ORR Mission*, Office of Refugee Resettlement, Administration for Children & Families, HHS.

and HHS, DRO continued performing these transportation duties until ORR was able. DRO continued to perform duties technically transferred to ORR until August 2004, when ORR was capable of independently fulfilling this mission.

DRO and ORR attempted to draft a Memorandum of Understanding (MOU) to delineate their respective roles and responsibilities for unaccompanied juvenile aliens. Both the DRO National Juvenile Coordinator and the relevant ORR Division director confirmed that an MOU for the unaccompanied juveniles program has not been signed and, in the words of the Coordinator, “relevant negotiations are currently in a stalemate.” The Coordinator said that ORR has had concerns with privacy and social services issues, while DRO has been concerned with security issues, such as restricting the releases of juveniles only to sponsors qualified in accordance with applicable immigration laws and policies.

Due to difficulties the two agencies had in agreeing on the terms of the MOU, they developed instead a *Statement of Principles* as an interim agreement.⁴⁶ The *Statement of Principles* represents the only current, formal agreement between DHS and HHS on the unaccompanied juvenile program. While the *Statement of Principles* defines overarching operational responsibilities, it does not address important issues and procedures regarding the care, treatment, and release of unaccompanied juveniles on which agreement between DHS and HHS is essential. The *Statement of Principles* regarding unaccompanied juveniles is an imprecise and preliminary document. It was issued in April 2004, over one year after the statutory assignment of responsibilities and resources to HHS. It has not been updated in the one year since it was signed. A more detailed, binding MOU would improve the effectiveness of the mandated coordination between the two agencies when unaccompanied juveniles require housing by ORR while their immigration cases are resolved. The directors for DRO and ORR have been responsible for facilitating the currently unsuccessful MOU negotiations. While the head of the responsible ORR Division and the DRO National Juvenile Coordinator have regular discussions on procedural matters, both officials agreed that these discussions were unable to resolve the serious policy differences that a comprehensive MOU would address.

Among other issues, DRO should continue to urge ORR to adopt specific criteria, enumerated in procedures, which govern when ORR may release unaccompanied juvenile aliens on bond or into the custody of a sponsor pending immigration proceedings. These procedures should identify appropriate sponsors to whom a juvenile may be released, the record checks to

⁴⁶ *Statement of Principles Between the Department of Homeland Security and the Department of Health and Human Services, Unaccompanied Alien Children Program*, April 6, 2004. See Appendix E.

be run on proposed sponsors, timing of notifications to DRO that ORR plans to release a juvenile, and a procedure for DRO to oppose a proposed ORR release of a juvenile.

DRO officials told us that release procedures vary by ORR facility. The DRO National Juvenile Coordinator said that ORR does not consistently notify DRO of a juvenile's pending release and may not notify DRO until days after the release. DRO concerns stem from its responsibility for the safety of juveniles in DRO Field Office jurisdictions and for the completion of juveniles' immigration cases. In FY 2004, 249 juveniles failed to appear for their required immigration hearings after being released from an initial ORR facility.⁴⁷

The following cases are illustrative of these juvenile release problems:

⁴⁷ EOIR, a component of the Department of Justice, tracks the progress and outcome of immigration cases in its Automated Nationwide System for Immigration Review (ANSIR) case management database. EOIR provided the data in response to our request to compare the DACS list of 1,857 detained juvenile aliens with ANSIR data showing juveniles who failed to appear and were consequently issued immigration removal orders in absentia.

Cases

- Two 16-year old juvenile siblings from Guatemala were apprehended together and placed in an ORR facility in Phoenix. The 16-year old sister was released, with ORR's approval, to a 19-year old male sponsor who was in the United States illegally. The sponsor submitted a birth certificate to ORR facility personnel with a different name from what he originally gave. The 16-year old brother, who was apprehended at the same time, was released to an illegal 20-year old who claimed to be his older brother. The Phoenix FOJC disagreed with the decision to release these two juveniles. Despite these objections, ORR released both of them in February 2005.
- Two related Guatemalan juveniles, each aged 17½, were transferred from a Phoenix DRO detention facility to a Phoenix ORR facility on March 4, 2005. Immediately following their transfer to the ORR facility, a Guatemalan adult applied to be a sponsor for the two juveniles and have them released into his custody. This proposed sponsor claimed to be the father of one juvenile and the uncle of the other. The proposed sponsor submitted birth certificates for completely different identities for the two juveniles to prove the juveniles' relationship to him. ORR accepted the two birth certificates as valid and then conducted an Internet background check on the sponsor with negative results. ORR approved the juveniles' releases to the applying sponsor in March 2005.

After being informed that these two juveniles had been released to the sponsor, the Phoenix FOJC performed immigration database checks on the sponsor. These checks revealed two prior apprehensions for immigration violations that made the sponsor removable. Further criminal database checks showed that the sponsor had an extensive U.S. criminal history, dating back to 1991, for offenses such as burglary, assault and battery, and receiving stolen property. These immigration and criminal offenses made this alien ineligible to sponsor these two juveniles.

We recommend that the Undersecretary, Border and Transportation Security:

Recommendation #5: Request ORR to enter into an MOU with DRO on respective responsibilities for unaccompanied juvenile aliens. The MOU should contain specific requirements for releases, including mandatory record checks on potential juvenile sponsors.

Need to Formalize Oversight Responsibilities of Juvenile Alien Program

DHS' leadership of its juvenile alien responsibilities is not well defined. The National Juvenile Coordinator transferred to DRO from the former INS and has continued responsibilities for developing juvenile policy for the DRO field, training DRO field personnel on policy and laws governing handling of juvenile aliens, and acting as an organizational liaison. However, a National Juvenile Coordinator has not been established for all of DHS and the position did not appear to have formal authority outside of DRO to direct CBP and non-DRO ICE personnel on juvenile alien issues.

The HSA formally transferred program responsibilities, staff, and budgets for unaccompanied juvenile aliens to ORR. However, DHS still has responsibility and authority for apprehending, processing, transporting, and initially detaining juvenile aliens, both unaccompanied and accompanied.⁴⁸ DHS is also responsible for housing accompanied juveniles until they are released from custody or returned to their country of origin.

While DHS is responsible for aspects of juvenile detention, the responsibilities are split between internal components and program authority is unclear. Formalizing the scope and authority of the DRO National Juvenile Coordinator could increase the uniform direction and guidance given to CBP and ICE, agencies that are both involved in apprehending, transporting, and housing juvenile aliens. It would also provide a clear point of contact for entities outside of DHS for juvenile-related policies and procedures.

We recommend that the Undersecretary, Border and Transportation Security:

Recommendation #6: Consider formally designating the position of National Juvenile Coordinator as the DHS lead on juvenile alien policy and the official DHS point of contact on juvenile alien policy for other agencies and organizations.

⁴⁸ DRO does not have specific objectives or program descriptions related to DRO's mission for juvenile aliens. *ENDGAME: Office of Detention and Removal Strategic Plan, 2003-2012*, Immigration and Customs Enforcement, June 27, 2003.

Status of 2001 DOJ OIG Report Recommendations

On September 28, 2001, DOJ OIG issued a report, *Unaccompanied Juveniles in INS Custody*.⁴⁹ This report described the management and treatment of unaccompanied juveniles apprehended and detained by the former INS. The report contained 28 recommendations to improve INS policies and procedures on juvenile detentions. Following the report, INS and DOJ OIG were able to resolve and close eight of the recommendations. After DHS assumed responsibility for INS' immigration functions in March 2003, we became responsible for tracking recommendations contained in the DOJ OIG report.

In March 2004, we reviewed the 20 remaining open recommendations from the DOJ OIG report.⁵⁰ We administratively closed eight recommendations and transferred responsibility for closing nine recommendations to HHS. We retained responsibility for resolving and closing two recommendations and determined that one recommendation would require action by both DHS and HHS to resolve and close. As part of this inspection, we reviewed progress made in addressing these last three recommendations.

Continuing CBP and ICE Training Program on Treatment of Juveniles

According to DOJ OIG report Recommendation 25:

The INS should establish a continuing post-academy INS-wide training program to ensure all employees whose duties bring them into contact with juveniles understand and comply with the terms of the *Flores* agreement and document the training.

CBP and ICE have not implemented an ongoing post-academy training program on the *Flores* agreement. Training on *Flores* was incorporated into the curriculum taught to immigration agents and officers at the Federal Law Enforcement Training Center (FLETC), but continuing post-academy training is lacking.

We interviewed 43 line CBP personnel and 22 line DRO personnel. Of these 65 interviewees, 21 CBP and DRO personnel graduated from FLETC after *Flores* was implemented in February 1997. They recalled receiving training relating to the proper treatment of juvenile aliens during their FLETC training. However, they did not recall receiving any additional formal training, other

⁴⁹ DOJ OIG Report Number I-2001-009.

⁵⁰ *Open Inspector General Recommendations Concerning the Former Immigration and Naturalization Service from "Unaccompanied Juveniles in INS Custody,"* a Report by the Department of Justice Inspector General, OIG-04-18, March 2004.

than on-the-job training, related to juvenile aliens and *Flores* after graduating from FLETC. Of the 44 CBP and DRO interviewees who did not receive the FLETC training, 18 recalled viewing a short video and receiving a related handout as part of their 1997 training on *Flores* but they did not recall the specific content of the training.

We noted that procedural and policy updates on handling juvenile aliens appear to be available to CBP and ICE personnel who have contact with juvenile aliens. For example, DRO FOJCs have weekly teleconference calls with the DRO National Juvenile Coordinator that include updates on relevant policies and procedures. According to a DRO official, the FOJCs then relay any policy or procedural updates to appropriate DRO officers in their respective Field Offices. Twenty-two DRO personnel, CBP officers, and Border Patrol agents said they intermittently receive updates relating to juveniles during pre-shift muster meetings, or via memoranda or email.

To ensure all relevant CBP and ICE personnel are informed of current procedures and requirements for handling juveniles, a consistent, DHS-wide training program should be implemented to ensure that all relevant employees understand and comply with *Flores*. We are closing Recommendation 25 of the 2001 DOJ OIG Report Number I-2001-009 and issuing the equivalent recommendation in this report.

We recommend that the Undersecretary, Border and Transportation Security:

Recommendation #7: Establish an ongoing training program to ensure that all CBP and ICE employees whose duties bring them into contact with juvenile aliens understand and comply with the terms of *Flores*. This training should be standardized in format and participation should be centrally documented.

Records of Transportation and Custody of Detained Juveniles

According to DOJ OIG report Recommendation 4:

The INS should implement procedures that require juvenile transportation and detention custodial records that provide sufficient accountability for all juveniles detained in the custody of the Border Patrol sectors and the districts.

Documentation of transportation and detention custodial records for juvenile aliens continues to be inconsistent at DRO Field Offices. Consistent and uniform documentation would provide ICE with adequate records to confirm

the use of appropriate procedures and identify problems that may arise during the transport and detention of juvenile aliens.

DRO Field Offices generally maintain travel and detention logs for detained juvenile aliens. However, the logs at the four DRO Field Offices we visited were not uniform in format. Some were composed of all aliens detained or transported, whether juveniles or adults. For example, the DRO National Juvenile Coordinator said that DRO uses Form I-216 (Record of Person and Property Transferred) and Form G-391 (Official Detail) to document transportation of juveniles. However, the Detroit FOJC said that the Detroit DRO's "Travel Section" maintains a spreadsheet of localized transportation records involving juveniles. The New York FOJC retains a handwritten logbook of juveniles housed at a JFK hotel. For New York DRO, transportation is documented on the Form G-391 and should be in the juvenile's A file.⁵¹ The New York DRO Field Office also maintains Forms I-216 for all detained aliens, but does not separate the forms for juveniles from those for adult aliens. Phoenix DRO documents transports of juvenile aliens using the form I-216, which is maintained by the local detention office. Phoenix DRO does not maintain a separate transport log for juveniles. The San Diego FOJC maintains an electronic spreadsheet of juvenile aliens in "active custody" and those who were released.

Juveniles were not separated as a category, or individually identified as juveniles, in the DRO logs we reviewed. The DRO National Juvenile Coordinator said DRO plans to track transportation of juveniles DRO-wide in a planned new database. However, an implementation date for the new database has not been determined.

The Border Patrol stations and POEs we visited also kept detention and transportation logs for apprehended juvenile aliens in differing, non-standardized formats. For example, the POE at Nogales, AZ maintains a separate, handwritten log for juveniles on site. Border Patrol stations in the San Diego sector also had individual logbooks but they did not separately identify juveniles from adult aliens.

Consistent and uniform documentation of transportation and detention of all juveniles in DHS custody will ensure accountability for the safety and treatment of such juveniles. Standard procedures to document the transportation and detention of detained juveniles should be implemented. We are closing Recommendation 4 of the 2001 DOJ OIG Report Number I-2001-009 and issuing the equivalent recommendation in this report.

⁵¹ In our A file review, these two forms were overwhelmingly not included in the juveniles' A files. We reviewed A files for 96 detained juveniles apprehended in calendar year 2004. Of the 96 detained juvenile aliens, Form G-391 was in only one A file and Form I-216 was in only six A files.

We recommend that the Undersecretary, Border and Transportation Security:

Recommendation #8: Implement procedures that require juvenile transportation and detention custodial records that provide sufficient detail and accountability for all juveniles apprehended by DHS.

Escorting Juveniles Until Release to a Sponsor

DHS has taken action to resolve and close Recommendation 5 of the DOJ OIG report, which provided:

The INS should implement procedures that require INS officers, or designated non-INS personnel under contract with the INS, to escort and maintain physical custody of all juveniles until the juvenile is released to a sponsor.

According to a DRO official, the DHS juvenile escort policy was revised and became effective on August 29, 2002. The revised escort policy is currently an appendix to the *Deportation Officer's Field Manual*. The revised escort policy will be a part of the updated Juvenile Protocol Manual, according to the DRO official. This policy states that escorts of unaccompanied juveniles require a "minimum of one escort" and that one DHS employee of the same gender of a juvenile has to be present during the escort. We consider the DHS portion of this recommendation resolved and closed.

Management Comments and OIG Analysis

In its response, dated September 12, 2005, BTS agreed that opportunities exist to improve its processes for apprehending, processing, transporting, and detaining juvenile aliens. BTS stated that the OIG report was accurate and the resultant recommendations were sound and represented operational ways to better address its approach to juveniles.

BTS said that overall, it was already taking action to address several recommendations. However, it did not specifically comment on any recommendations, including the five for which it is responsible. CBP concurred with and intends to take action to address the three recommendations within its purview. ICE did not substantively address the three recommendations for which it is responsible (CBP and ICE are jointly responsible for two recommendations). In its response, BTS did not specifically concur with any of the recommendations; CBP concurred with 3 of the 8 recommendations; and, ICE did not specifically concur with any of

the recommendations. We consider 1 of the 8 recommendations resolved and 7 recommendations unresolved. All recommendations remain open.

CBP generally agreed with the report's information, findings, and recommendations. CBP recognized that certain aspects of its processing, monitoring, and housing of juvenile aliens could be improved. CBP noted that the report failed to discuss that increasing numbers of juveniles are "guides" for illegal alien smugglers. While we obtained evidence that this practice occurs in Border Patrol sectors, specifically in the San Diego and Tucson sectors, our review did not encompass criminal prosecutions of juveniles (or aliens claiming to be juveniles). Instead, we focused on the administrative processes for addressing juvenile's immigration violations.

ICE concurred with the content of most of the report. ICE's most significant comment was that the report should include additional information related to DHS' efforts in requesting that ORR provide appropriate bed space within reasonable distances where juveniles are apprehended. We obtained evidence of DHS' efforts to request that ORR provide appropriate bed space within reasonable distances from points of apprehension. Particularly, DRO attempted to address challenges stemming from transferring juveniles from DHS to ORR custody by directing the issuance of at least five letters, between October 8, 2003, and May 27, 2004, from DHS to ORR. These letters addressed issues emanating from the March 2003 reorganization of federal responsibilities for juvenile aliens, including transporting juveniles to remote and distant facilities and securing available bed space in convenient locations. However, we could not obtain evidence as to ORR's operational responses to these letters.

Overall, BTS' responses to our recommendations did not uniformly illustrate the corrective actions it intends to take. Specifically, we are concerned about whether BTS recognizes the importance of negotiating an MOU with ORR and the positive impact that would have on the transportation and detention of juvenile aliens. We were also unable to discern the corrective action ICE intends to take, especially for establishing consistent and uniform documentation for the transportation and detention of juveniles.

CBP submitted technical comments on specific statements and facts in the report. We evaluated CBP's technical comments on an individual basis and modified our report, as appropriate.

Below are management comments and OIG analysis of management comments for each recommendation.

Recommendation 1: Formally request that EOIR ensure that the lists of free legal services providers are current and accurate. Updated lists should be distributed on a regular basis to all Border Patrol stations and POEs.

BTS Response: BTS did not provide a response to the recommendation.

OIG Evaluation: We consider the recommendation unresolved and open because no response to the recommendation was provided.

Recommendation 1 – Unresolved - Open

Recommendation 2: Formulate and disseminate official policies, applying to all CBP facilities that hold juvenile aliens, which stipulate the exceptions to the time guidelines on holding juveniles; the deadlines and formats for notification; and, specific officials who are authorized to approve extensions.

BTS Response: CBP concurred with this recommendation. CBP stated that its two relevant Offices - Office of Field Operations (OFO) and Office of the Border Patrol (OBP) – issued guidelines that were sufficient to close its responsibility for this recommendation.

The relevant OFO policy was issued on March 9, 2004, and was obtained during our review.⁵² OFO stated it would transmit the policy again to all POEs and include it in morning “muster” briefings given to CBP officers stationed at POEs. This policy included guidance to POEs to notify the applicable Port Director for detentions of any aliens, including juveniles, in secure areas that exceeded 12 hours. In addition, the policy stipulated that the Director, Field Operations, should be notified through the chain of command when detention of any alien exceeded 24 hours. This process is designed so that the Director, Field Operations, can notify the counterpart in DRO to resolve the situation when necessary.

The relevant OBP policy was issued on September 2, 2005, after our draft report was issued to BTS. This interim guidance states that “unaccompanied juveniles” should not be held longer than 24 hours. CBP stated that the interim guidance will be effective until “official CBP detention guidelines” are promulgated.

OIG Evaluation: The OFO response is sufficient to address the reviewing and approving of decisions to hold juvenile aliens at POEs for more than 24 hours. The OFO policy is applicable to all aliens, whether juveniles or adults.

⁵² *Secure Detention Procedures at Ports of Entry*, March 9, 2004.

However, the interim guidance issued by OBP on September 2, 2005, does not cover accompanied juvenile aliens, but only unaccompanied juveniles.⁵³ In addition, the interim guidance does not address the process for reviewing and approving the holding of juveniles for more than 24 hours at the Border Patrol sector or OBP Headquarters level. Conversely, the referenced OFO policy entails Port Director approval of all detentions in secure areas “that reach or exceed 12 hours” and provisions for notifying the Director, Field Operations, when an alien is held at the POE for “24 hours or more.”

Please provide us with a copy of the updated policy for OBP that includes accompanied juveniles aliens and entails notification procedures within the OBP chain of command.

Recommendation 2 – Resolved - Open

Recommendation 3: Consider the costs and benefits for DRO to obtain additional bed space in facilities with family unity capacity. If determined to be beneficial, evaluate and determine the most advantageous locations for family unity facilities based on factors including volume of juvenile apprehensions and proximity to border areas or POEs.

BTS Response: Neither BTS nor ICE provided responses to the recommendation.

OIG Evaluation: We consider the recommendation unresolved and open because no response to the recommendation was provided.

Recommendation 3 – Unresolved - Open

Recommendation 4: Propose to ORR that ORR and DRO jointly evaluate apprehension rates by geographic area and provide adequate bed space near significant areas of apprehensions in order to minimize DHS initial interstate transfers of unaccompanied juveniles.

BTS Response: BTS did not provide a response to the recommendation. ICE proposed a technical change that the recommendation should be amended to read, “Propose that DRO continue to propose that ORR adequately address and resolve these issue...”

OIG Evaluation: We consider the recommendation unresolved and open because BTS did not respond to the recommendation. Regarding the proposed

⁵³ Aguilar, David V., Memorandum for All Chief Patrol Agents, *Interim Guidance Regarding Unaccompanied Juveniles in Custody*, September 2, 2005.

ICE change, this recommendation is designed to elevate the proposal to ORR to the DHS Under Secretary level. Conversely, the proposed language retains these actions at the DRO level. The recommendation was not changed.

Recommendation 4 – Unresolved - Open

Recommendation 5: Request ORR to enter into an MOU with DRO on respective responsibilities for unaccompanied juvenile aliens. The MOU should contain specific requirements for releases, including mandatory record checks on potential juvenile sponsors.

BTS Response: BTS did not provide a response to the recommendation.

OIG Evaluation: We consider the recommendation unresolved and open because no response to the recommendation was provided.

Recommendation 5 – Unresolved - Open

Recommendation 6: Consider formally designating the position of National Juvenile Coordinator as the DHS lead on juvenile alien policy and the official DHS point of contact on juvenile alien policy for other agencies and organizations.

BTS Response: BTS did not provide a response to the recommendation.

CBP did not concur with the recommendation. According to CBP, it is not appropriate for an official at one agency to set policy unilaterally that impacts other agencies. CBP further asserts that it would be more appropriate to assign responsibility to coordinate juvenile activities among all agencies to an official at the Department level.

OIG Evaluation: We consider the recommendation unresolved and open because no BTS response to the recommendation was provided.

Regarding CBP's comment, the recommendation specifies that the position of National Juvenile Coordinator would be re-designated as "the DHS lead on juvenile alien policy." The spirit of this recommendation would elevate the responsibility for coordinating juvenile alien activities to an official at the Department level. This clarification alleviates CBP's concern with the recommendation.

Recommendation 6 – Unresolved - Open

Recommendation 7: Establish an ongoing training program to ensure that all CBP and ICE employees whose duties bring them into contact with juvenile aliens understand and comply with the terms of *Flores*. This training should be standardized in format and participation should be centrally documented.

BTS Response: CBP concurred with the recommendation. Within CBP, OFO stated that relevant training on the handling of juveniles was included in its “Unified Cross-Training of CBP officers” training course since its inception. However, CBP did not provide a date for when this training commenced. Nonetheless, this training includes lessons and distributed materials on *Flores*. CBP also plans to include processing of juveniles in an “Advanced Admissibility Course” that is currently being developed. In addition, CBP said that all training of CBP officers is tracked in a “central database maintained by CBP.”

The OBP “training department” will work to determine the best way to provide *Flores* training for Border Patrol agents after graduation from the Border Patrol academy. However, OBP did not specify how it would track participation in the training in a centralized manner. CBP specified that the above OFO and OBP training programs would be implemented by March 31, 2006.

ICE did not provide a response to the recommendation.

OIG Evaluation: We concur with CBP’s intent to establish an ongoing, standardized training program to ensure that all relevant OFO and OBP employees understand and comply with *Flores*. We acknowledge that CBP is taking significant steps to ensure that ongoing participation in training occurs for all CBP employees whose duties bring them into contact with juvenile aliens. However, CBP’s response does not include a description of the frequency with which CBP employees would participate in *Flores*-related training. In addition, we need additional information on the “central database maintained by CBP” that tracks training participation to verify that it is consistently and centrally documented.

We consider the recommendation unresolved because ICE did not provide a response to the recommendation. The recommendation is open until CBP and ICE provide additional information on the *Flores* training for their employees and on the methods for centrally tracking participation in this training.

Recommendation 7 – Unresolved - Open

Recommendation 8: Implement procedures that require juvenile transportation and detention custodial records that provide sufficient detail and accountability for all juveniles apprehended by DHS.

BTS Response: CBP concurred with the recommendation and said that it already has procedures in place to address the recommendation.

OFO procedures for recording the detention of all aliens, including juveniles, at POEs are enumerated in the March 9, 2004, OFO directive.⁵⁴ This directive mandated that each POE maintain a “detention log (manually and/or by computer)” for all detainees placed in a POE detention cell. OBP’s interim guidance, dated September 2, 2005, requires that each Border Patrol station maintain a “detention log (manually or electronically) for all unaccompanied juveniles.” Both the OFO directive and the OBP guidance specify the types of identifying and custody information that should be captured.

ICE did not provide a response to the recommendation.

OIG Evaluation: We concur with the issuance of updated CBP policies to standardize juvenile detention logs. The OFO and OBP policies designated in CBP’s response address the maintaining of detention logs for juvenile aliens held at POEs and Border Patrol stations. However, the OFO policy should clarify that a standardized format for detention logs related to juvenile aliens should be maintained at each POE and should mandate that juvenile detention logs should be separately maintained from detention logs for adult aliens. In addition, OBP’s guidance does not address the standardization of formats for the logs. The OBP guidance also only covers unaccompanied juvenile aliens and is not applicable to all juvenile aliens. Lastly, the OBP response does not specify that juvenile detention logs should be separately maintained from detention logs for adult aliens.

We consider the recommendation unresolved because ICE did not provide a response to the recommendation. The recommendation is open until CBP provides updated policies applying to OFO and OBP for standardizing and separating juvenile custodial records; until ICE provides updated, responsive policies for standardizing and separating juvenile custodial records; and, after we have an opportunity to evaluate the extent to which these records provide sufficient detail and accountability for all juveniles held by CBP and ICE.

Recommendation 8 – Unresolved - Open

⁵⁴ *Secure Detention Procedures at Ports of Entry*, March 9, 2004.

Purpose, Scope, and Methodology

The purpose of this review was to determine the effectiveness of the coordination between CBP and ICE after CBP apprehends and initially holds juvenile aliens. Our review included the process by which CBP informs ICE that a juvenile alien was apprehended, the process for transferring the juvenile alien to ICE DRO custody, and the effectiveness of the current system for transferring care and custody of unaccompanied juvenile aliens to HHS. In addition, we assessed the progress of relevant DHS components in implementing three open recommendations from a prior DOJ OIG report.⁵⁵

We reviewed the current organizational structure and objectives for the handling of juvenile aliens by DHS, including the roles and responsibilities of the two agencies - CBP and ICE - that have primary functions for apprehending, processing, transporting, and detaining juvenile aliens. Our review included an analysis of the process by which CBP informs ICE DRO that a juvenile alien has been apprehended, the process for transferring the juvenile to DRO custody, and the process of transferring custody of unaccompanied juveniles to ORR. We examined the length of time juvenile aliens were in DHS custody, both at CBP and DRO facilities. We also reviewed the progress of DHS in implementing three open recommendations concerning juvenile aliens from a prior DOJ OIG report, *Unaccompanied Juveniles in INS Custody*.⁵⁶

We did not evaluate ORR policies and procedures that are effective after unaccompanied juvenile aliens are transferred to ORR custody, nor did we review any DRO or ORR juvenile detention facilities other than the physical descriptions of initial detention facilities enumerated in the report.

At the national level, we interviewed CBP and ICE management and program officials at CBP and ICE headquarters. These interviews included the DRO National Juvenile Coordinator and officials representing CBP personnel at POEs and the Border Patrol. We interviewed officials at ORR, including the director of the Division of Unaccompanied Children's Services. We also interviewed officials with expertise in matters involving juvenile aliens from a non-governmental organization. We obtained data on national juvenile apprehensions and program budgetary allocations for FY 2003 and FY 2004.

⁵⁵ *Unaccompanied Juveniles in INS Custody*, Department of Justice, Office of the Inspector General, I-2001-009, September 28, 2001.

⁵⁶ DOJ OIG Report Number I-2001-009.

Our CBP fieldwork entailed reviewing documents and information, conducting interviews, and touring appropriate facilities in Detroit, MI; New York, NY; San Diego, CA; and Tucson, AZ. We visited the land POE at the Blue Water Bridge in Port Huron, MI; the air POE at JFK International Airport in New York, NY; the land POE at San Ysidro, CA; and the land POE at Nogales, AZ. We visited three of the 20 Border Patrol sectors: Detroit, San Diego, and Tucson. In each, we visited the Border Patrol sector headquarters and three stations. We interviewed managers and line Border Patrol agents in each sector and managers and line CBP officers at each POE.

For ICE, we visited four of the 21 Field Offices of ICE's DRO: Detroit, MI; New York, NY; Phoenix, AZ; and San Diego, CA. We interviewed the FOJC at each of the four locations as well as the Field Office Director and other managers overseeing DRO handling of juvenile aliens.

We reviewed 174 Alien files for juvenile aliens apprehended by CBP or ICE in calendar year 2004. Alien files, also known as A files, are the central repositories for immigration information on individual aliens in the United States. Our sample of 174 A files included 114 unaccompanied juveniles and 57 accompanied juveniles.⁵⁷ The average age was 12.6 years, ranging from 7 months to 17 years old. We reviewed the A files of 63 female and 111 male juveniles. Of the 174 A files, 40 juveniles were citizens of Guatemala, 21 of Mexico, 21 of El Salvador, 15 of Honduras, and 11 of Jordan. There were smaller numbers of citizens of other countries.⁵⁸

We analyzed data from the Deportable Alien Control System (DACS) and CBP's Enforcement Case Tracking System (ENFORCE).⁵⁹ We evaluated the data in these two systems in order to track the dates and other relevant information regarding the apprehension, processing, transportation, and detention of juvenile aliens by CBP and ICE. We also analyzed data, provided by EOIR, from its Automated Nationwide System for Immigration Review (ANSIR) case management database.

We examined relevant statutes and regulations, including the Homeland Security Act of 2002⁶⁰ and Title 8 of the Code of Federal Regulations. We reviewed policies and procedures emanating from *Flores*.⁶¹ We evaluated policies and procedures that cover the handling of juvenile aliens by CBP and

⁵⁷ We could not determine whether three juvenile aliens in our A file sample were unaccompanied or accompanied.

⁵⁸ Our sample of 174 A files for juvenile aliens was judgmental and based on available files. Data could not be projected to the universe of juvenile aliens apprehended in 2004.

⁵⁹ DACS captures data on juveniles who are apprehended and under removal proceedings. ENFORCE captures specific apprehension data on juveniles, such as date and location of apprehension and initial immigration charges.

⁶⁰ P.L. 107-296.

⁶¹ *Flores*, Stipulated Settlement Agreement, August 12, 1996.

ICE, including relevant DHS policy memoranda, the Juvenile Protocol Manual, and other guidance.⁶² We reviewed documentation pertinent to the responsibilities of CBP, ICE, and ORR, including the *Statement of Principles*, the interagency agreement between DHS and HHS. We analyzed logbooks and other records regarding the apprehension, transportation, and detention of juvenile aliens by CBP and ICE, including relevant immigration forms.

We conducted our review between September 2004 and February 2005, and reviewed supplemental data up to June 2005. Our review was conducted under the authority of the *Inspector General Act of 1978*, as amended, and according to the *Quality Standards for Inspections* issued by the President's Council on Integrity and Efficiency.

⁶² Detention and Removal Officer's Field Manual, Appendix 11-4: Juvenile Protocol Manual, November 2003.

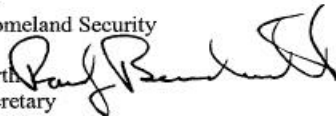
U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

September 12, 2005

MEMORANDUM FOR: Richard L. Skinner
Inspector General
Department of Homeland Security

FROM: Randy Beardsworth 
Acting Under Secretary
Border and Transportation Security

SUBJECT: Response to the Office of Inspector General Draft Report: *A Review of DHS's Responsibilities for Juvenile Aliens.*

Thank you for the opportunity to review and comment on the Office of Inspector General (OIG) Inspection draft report related to DHS's responsibilities for juvenile aliens. The Border and Transportation Security Directorate (BTS) recognizes the effort of the OIG to incorporate BTS commentary and suggestion, and appreciates the work done in this review to identify areas where we may improve our approach to juvenile aliens to help us better accomplish our mission.

U.S. Customs and Border Protection (CBP) concurs with the majority of the report's analysis and recommendations. CBP acknowledges the problem areas presented in the report and is coordinating with other appropriate DHS agencies to resolve them. CBP intends to take action to address the three recommendations within its purview. CBP has included comments specific to these recommendations, as well as several substantive and technical clarifications.

Immigration and Customs Enforcement (ICE) also concurs with the majority of the report and appreciates the report's integration of earlier ICE input. ICE does point out DHS's continuing effort to encourage the Office of Refugee Resettlement (ORR) to provide appropriate bed space for detained juveniles within reasonable distance from points of apprehension, and hopes to see this effort noted in the report.

BTS concurs that this report is largely accurate and that its recommendations represent improved practices to better address this sensitive and important aspect of Homeland Security. BTS also supports CBP's and ICE's specific clarifications and responses to particular issues as outlined in their full responses. The accompanying attachments consist of CBP's and ICE's full responses to the report. It is important to note that processes are already in motion to address several of the recommendations for improvement.

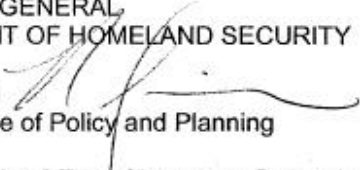
Attachments

www.dhs.gov



U.S. Customs and
Border Protection

MEMORANDUM FOR RICHARD SKINNER
INSPECTOR GENERAL
DEPARTMENT OF HOMELAND SECURITY

FROM: Nicolle Sciara 
Director, Office of Policy and Planning

SUBJECT: Response to the Office of Inspector General Draft Report on
Juvenile Aliens

Thank you for providing us with a copy of the draft report entitled "A Review of the DHS' Responsibilities For Juvenile Aliens." The U.S. Customs and Border Protection (CBP) appreciates the opportunity to work with the Office of Inspector General (OIG) in constructing a balanced and accurate document.

CBP generally agrees with the overall content. As the report reflects, certain areas concerning the detention of juvenile aliens need to be addressed. CBP acknowledges the existence of these problem areas and is coordinating with U.S. Immigration and Custom Enforcement's (ICE) Office of Detention and Removal Operations (DRO) in resolving them. The importance of identifying the issues highlighted in the report, along with the corrective measures being taken, will ensure that proper procedures are followed in processing, monitoring, and housing juveniles in custody.

However, the report fails to note the increasing numbers of juveniles – or those claiming to be juveniles – that are in fact smugglers of illegal aliens, i.e., "guides." Mexican smuggling organizations, especially in the Tucson Sector, El Centro Sector, and elsewhere, are using the juvenile status to avoid criminal prosecution because the United States Attorney's Office rarely prosecutes juveniles.

Regarding the eight recommendations outlined in the report, CBP concurs with and is taking action to address the three that affect CBP. Attached are comments specific to the recommendations, as well as technical comments that relate to statements that need to be clarified prior to the finalization of this report.

With regard to the classification of the draft report, CBP has not identified information within the report requiring restricted public access based on a designation of "For Official Use Only."

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Thank you for your assistance. If you have any questions, please have a member of your staff contact Ms. Lynn Richardson, Audit Liaison, Office of Policy and Planning, at (202) 344-2953.

Attachment

**Response to OIG Draft Report
A Review of DHS' Responsibilities For Juvenile Aliens**

Response to Recommendations

Recommendation #2: Formulate and disseminate an official policy, applying to all CBP facilities that hold juvenile aliens, on the exceptions to the 24-hour limit on holding juveniles; stipulate deadlines and format for requesting extensions; and, identify specific officials who are authorized to approve extensions.

Response: CBP concurs with the recommendation. Both Office of Field Operations (OFO) and Office of Border Patrol (OBP) have issued guidelines to satisfy this recommendation. However CBP suggests the OIG revise the language to read "24-hour guidelines" rather than "24-hour limit." The 24-hour period is a guideline, not a maximum as stated in the report.

OFO: For OFO, this policy is provided in CBP Directive 3340-030A, *Secure Detention Procedures at Ports of Entry*, dated March 9, 2004. This Directive includes guidance to the ports of entry (POEs) to notify the Port Director for detentions in secure areas that exceed 12 hours, and to notify the Director, Field Operations (DFO) through the chain of command if detention periods at POEs exceed 24 hours. OFO will re-disseminate existing the existing directive and forward a mandatory muster to the field to remind CBP officers of existing policy requirements. CBP, at both Border Patrol stations and the POEs makes every effort to process juveniles as quickly and safely as possible and to either remove them or transfer them to ICE DRO or to appropriate juvenile detention facilities in a timely manner. When the period of time at a POE exceeds 24 hours, the POEs are directed to notify their chain of command, so that the DFO can contact his/her counterpart in DRO or other appropriate entity in order to resolve the situation as expeditiously as possible.

OBP: OBP issued interim guidance on detention standards dealing specifically with apprehended juvenile aliens on September 2, 2005. This interim guidance entitled, *Interim Guidance Regarding Unaccompanied Juveniles in Custody*, require agents in the field to prioritize the processing of unaccompanied juveniles over all other apprehensions. Additionally, the guidelines state: "As a rule, unaccompanied juveniles should not be detained longer than 24 hours in temporary holding rooms." Notification procedures are outlined for situations that necessitate that unaccompanied juveniles remain in OBP custody in excess of this time frame. This interim guidance will remain in effect until official CBP detention guidelines are established.

Due Date: Closed.

Recommendation #7: Establish a continuing post-academy training program to ensure that all CBP and ICE employees whose duties bring them into contact with juvenile aliens understand and comply with the terms of *Flores*. This training should be standardized in format and participation should be centrally documented.

Response: CBP concurs with the recommendation.

OFO: When CBP began the Unified Cross – Training of CBP officers, CBP began to include training on the handling of Juveniles from the very beginning. The first course that was rolled out to the field was Unified Primary Cross Training. This lesson included several pages on how to process juveniles and covered the "Flores vs. Reno" case and all officers were given reference materials about "Juveniles: Flores vs. Reno."

Since that time, we have included information and references to processing juveniles in every relevant cross-training we have produced. Those courses include:

- Unified Immigration Processing – Land Border
- Unified Immigration Processing – Seaport
- Unified Secondary Processing – Airport

We also plan to have significant information on processing juveniles in the Advanced Admissibility Course that we are currently developing.

All of the training provided to CBP officers is tracked in a central database maintained by CBP. Every time an officer takes a course, the course number is entered into the record for the CBP officer.

OBP: The training department of OBP will work with the Office of Training and Development to determine the most effective means of providing training pertaining to *Flores* to Border Patrol agents subsequent to their graduation from the Border Patrol Academy. This training will comply with the standardized format and centralized documentation procedures for CBP.

Due Date: March 31, 2006.

Recommendation #8: Implement procedures that require juvenile transportation and detention custodial records that provide sufficient detail and accountability for all juveniles apprehended by DHS.

Response: CBP concurs with this recommendation and has procedures already in place to address this issue.

OFO: OFO already has procedures in place to record the detention of all aliens in its custody at ports of entry. CBP Directive 3340-030A, *Secure Detention Procedures at Ports of Entry*, dated March 9, 2004, mandates that each POE maintain a detention log (manually and/or by computer) for all detainees placed in a port of entry detention cell. In addition, an Individual Caution Sheet is generated for detainees who pose a special risk, to include juveniles, and is maintained until the detainee is released from CBP custody.

OBP: OBP's *Interim Guidance Regarding Unaccompanied Juveniles in Custody*, dated September 2, 2005, contains a section requiring each Border Patrol station to maintain a detention log (manually or electronically) for all unaccompanied juveniles placed in custody. This log will be kept on file for 2 years and contain, at minimum, the following information for each detainee:

- . Name
- . Sex
- . Age
- . A-Number
- . Nationality
- . Reason for placement
- . Date and time in
- . Time Field Office Juvenile Coordinator was notified
- . Date and time out (transferred or released)
- . Final disposition

This log must also contain information indicating meal times, visual checks, and comments.

Due Date: Closed.

Thursday, September 08, 2005

ICE Response
OIG Draft Juvenile Report

ICE largely concurs with the new draft version of the OIG report on juveniles in DHS custody and is pleased that OIG has adopted several ICE suggestions following our last meeting.

The only ICE comments are as follows:

On page 19 of the report, the section entitled "Placement Determinations for Unaccompanied Juveniles," needs to include additional information related to DHS' efforts in requesting that ORR provide appropriate bed space within reasonable distances from points of apprehension. Following the transfer of the juvenile program and juvenile facility contracts to ORR, ORR cancelled a large number of these juvenile facility contracts. Many of these were within a reasonable commuting distance from points of apprehension. In addition, ORR has encountered difficulty in maintaining adequate bed space.

These two elements combined have forced DHS to house juvenile aliens for inordinate amounts of time in accommodations considered to be less than adequate for this population. Also, DHS has been relegated to contracting with a number of juvenile facilities throughout the country to compensate for ORR's either not have enough bed space or the location of such. DHS has been discussing these issues with ORR ever since the transfer of the program in March of 2003. This should be reflected in this section as well as the recommendation (#4) which should be amended to read: "Propose that DRO continue to propose that ORR adequately address and resolve these issues..."

Thanks.

John J. Pogash

Melissa M. Howard, Ph.D., Chief Inspector, Department of Homeland Security, Office of Inspections and Special Reviews

Andrew B. Hoffman, Inspector, Department of Homeland Security, Office of Inspections and Special Reviews

Vivian Dupuy, Inspector, Department of Homeland Security, Office of Inspections and Special Reviews

Jennifer A. Lindsey, Inspector, Department of Homeland Security, Office of Inspections and Special Reviews

Reno v. Flores, a class action lawsuit, was filed against the INS challenging the agency's arrest, processing, detention, and release of juveniles in its custody. The case involved unaccompanied minors who entered the United States illegally and were subsequently detained by the U.S. government. In August 1996, the parties to the lawsuit negotiated a settlement, called the *Flores* Settlement Agreement, on several issues, including the detention, release, and treatment of juveniles in INS custody.⁶³

After a juvenile's apprehension, the INS agreed to abide by the following stipulations for processing juveniles held in its custody:

- Expeditiously process apprehended juvenile aliens;
- Promptly provide each detained juvenile with
 - a) A Form I-770, Notice of Rights and Request for Disposition,
 - b) An explanation of the right of judicial review,
 - c) A list of free legal services available in the district, and
 - d) A Notice of Custody Determination form describing the right to a bond redetermination hearing if applicable; and
- Afford a bond redetermination hearing before an immigration judge to juveniles in removal proceedings unless the juvenile indicates refusal of such a hearing on the Notice of Custody Determination form.

The INS agreed to abide by the following conditions for detaining juveniles:

- Place detained juveniles in the least restrictive setting appropriate to the juvenile's age and circumstances;
- Hold juvenile aliens in safe and sanitary facilities that provide access to toilets and sinks, drinking water and food as appropriate, medical assistance if necessary, adequate temperature control and ventilation, adequate supervision, and contact with family members who were arrested with the juvenile;
- Segregate unaccompanied juveniles from unrelated adults while in custody, including during transportation. Where such segregation is not immediately possible, unaccompanied juveniles cannot be detained with unrelated adults for more than 24 hours;
- Release juvenile aliens to an appropriate sponsor if detention is not deemed necessary to secure the juvenile's appearance for immigration proceedings or to ensure the juvenile's safety; and

⁶³ *Flores* Stipulated Settlement Agreement, August 12, 1996, and Detention and Removal Officer's Field Manual, Appendix 11-4: Juvenile Protocol Manual, November 2003.

- Transfer a juvenile alien to an appropriate placement facility within 72 hours to five days, as appropriate.



STATEMENT OF PRINCIPLES
BETWEEN
THE DEPARTMENT OF HOMELAND SECURITY
AND
THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
UNACCOMPANIED ALIEN CHILDREN PROGRAM

This Statement of Principles addresses several major issues regarding implementation of the unaccompanied alien children (UAC) program. This document does not resolve all outstanding issues, and the parties will continue to work to develop agreement on policies and procedures in remaining areas of mutual concern.

The parties recognize that, pursuant to the Homeland Security Act, the laws and regulations that applied to functions related to unaccompanied alien children performed by the Immigration and Naturalization Service on February 28, 2003 now apply to both the Department of Homeland Security (DHS) and the Office of Refugee Resettlement (ORR), Administration for Children and Families, Department of Health and Human Services, in the performance of their respective responsibilities. The parties recognize the same principle with respect to the provisions of the *Flores* Settlement Agreement.

The parties note that the functions related to unaccompanied alien children have been divided between the agencies into two general areas: (1) immigration benefits and enforcement; and (2) care and placement. DHS will continue to be responsible for apprehension, processing, and immigration actions. These actions include placement in immigration proceedings; removal from the United States where appropriate; decisions, after consultation with ORR, regarding consent to the jurisdiction of a state court when a child in the UAC program wishes to pursue Special Immigrant Juvenile (SIJ) status; and adjudication of petitions for SIJ status. ORR's primary function is to make determinations regarding the care and placement of unaccompanied children who have been referred by DHS for placement and have been accepted by ORR in the UAC program. ORR will have the authority to make decisions regarding such a child's medical care while the child is in custody. ORR is responsible for making placement determinations, and for providing care and placement of such children. ORR is not responsible for children placed in facilities without ORR approval.

The parties are committed to working cooperatively to ensure that United States immigration laws are effectively enforced and that the interests of unaccompanied alien children are considered in decisions and actions relating to their care and placement.

The parties recognize the principles set out in the *Flores* Settlement Agreement, which direct that unaccompanied alien children in the federal government's custody be treated with dignity, respect and special concern for their particular vulnerabilities as children. The *Flores* Settlement Agreement also provides that there is a general policy favoring release to custodians, when an appropriate custodian is available per the settlement's

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terms and when detention is not necessary either to secure the child's timely appearance before DHS or the immigration court, or to ensure the child's safety or that of others. ORR will be responsible for determining whether an unaccompanied alien child will be released to a custodian until such time as removal is imminent. In making this determination, ORR will consult with DHS and will follow established ORR guidelines.

The parties will work together, as needed, to develop regulations implementing the *Flores* Settlement Agreement and section 462 of the Homeland Security Act. Each agency, in consultation with the other party, will develop or revise procedures, as necessary, to carry out their respective responsibilities with respect to the unaccompanied alien children program.

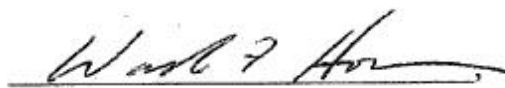
DHS will submit to ORR its anticipated detention requirements for reference in the annual ORR budget request by March of each year.

The parties will conduct a joint review of the unaccompanied alien children program on an annual basis to ensure operational and programmatic objectives are being met.

The parties will meet regularly to discuss day-to-day operations, individual cases and procedures.

If there is disagreement about the parties' roles and responsibilities or about individual cases, the undersigned, or individuals designated by them, will resolve the dispute.

Statement of Principles Signatures:



Wade F. Horn, Ph.D.
Assistant Secretary
for Children and Families
Department of Health and Human Services

Date: APR 6 2004



Michael J. Garcia
Assistant Secretary for U.S. Immigration
and Customs Enforcement
Department of Homeland Security

Date: APR 6 2004

Department of Homeland Security

Secretary
Deputy Secretary
Under Secretary, Border and Transportation Security
Commissioner, Customs and Border Protection
Assistant Secretary, Immigration and Customs Enforcement
Chief of Staff
Assistant Secretary, Public Affairs
General Counsel
Executive Secretariat
Chief Security Officer
DHS OIG Liaison
BTS Audit Liaison
CBP Audit Liaison
ICE Audit Liaison

Office of Management and Budget

Chief, Homeland Security Branch
DHS Program Examiner

Department of Health and Human Services

Inspector General

Congress

Congressional Oversight and Appropriations Committees as Appropriate


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