



# Department of Homeland Security Office of Inspector General

## Age Determination Practices for Unaccompanied Alien Children in ICE Custody





Homeland  
Security

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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 as part of our oversight responsibilities to promote economy, efficiency, and effectiveness within the department.

This report addresses Immigration and Customs Enforcement's practices for determining the age of individuals in its custody, focusing on the use of dental or skeletal radiographs. It is based on interviews with employees and officials of relevant agencies and institutions, direct observations, 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. We trust 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

A-file	Alien File
CBP	United States Customs and Border Protection
DHS	Department of Homeland Security
DIHS	Division of Immigration Health Services
DRO	Office of Detention and Removal Operations
ENFORCE	Enforcement Case Tracking System
FY	fiscal year
HHS	Department of Health and Human Services
ICE	United States Immigration and Customs Enforcement
INS	Immigration and Naturalization Service
JFRMU	Juvenile and Family Residential Management Unit
ORR	Office of Refugee Resettlement
PHS	United States Public Health Service
TAR	Treatment Authorization Request
TVPRA	Trafficking Victims Protection and Reauthorization Act of 2008

# OIG

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*Department of Homeland Security  
Office of Inspector General*

## **Executive Summary**

The Department of Homeland Security Immigration and Customs Enforcement enforces United States immigration law by apprehending, detaining, and deporting individuals who are not authorized to remain in the country. Children are sometimes among those encountered, and the Department of Homeland Security must ensure that they are not detained with unrelated adults.

To separate unaccompanied children from detained adults, the Department of Homeland Security attempts to establish the date of birth of anyone it cannot readily identify as an adult or child. Immigration officials collect information on possible juveniles to ascertain their correct ages. Information may include professional opinions based on dental or skeletal radiographs. However, the use of radiographs to determine chronological age—age from a person’s date of birth—has been criticized by some in the medical and advocacy communities as unreliable.

We reviewed Immigration and Customs Enforcement’s approach to age determinations at the request of the House Appropriations Committee. In House Report 110-862, the committee said that the department had “not ceased its reliance on bone and dental forensics for child age determinations, as directed” in a previous report. In its request, the committee asked us to report on any cases in which Immigration and Customs Enforcement used bone and dental forensics in 2008 or 2009.

Immigration and Customs Enforcement does not track age determination data; therefore, we were unable to identify all cases where it used radiographs for age determinations. Based on interviews with officials, and our review of selected files and guidance, we concluded that Immigration and Customs Enforcement recognizes the limits of radiographs and strives to obtain additional information when making age determinations. We are making recommendations to track age determination data better, update guidance for field offices, and ensure that radiographic exam results include all required information and are properly documented.

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## Background

The Department of Homeland Security's (DHS) Immigration and Customs Enforcement (ICE) enforces United States immigration law by apprehending, detaining, and deporting individuals who are not authorized to remain in the country. Children apprehended by ICE require different treatment than adult detainees.

Unaccompanied alien children—individuals less than 18 years of age who are unlawfully in the United States without a parent or other legal guardian—must be transferred to the Department of Health and Human Services (HHS), Office of Refugee Resettlement's (ORR) custody to await deportation or transfer to a legal guardian in the United States.<sup>1</sup>

To separate unaccompanied children from adults, ICE attempts to establish the date of birth for any apprehended person not readily identifiable as an adult or child. ICE uses various forms of information for age determination purposes, including interview statements and documentation such as birth certificates. When ICE has difficulty determining whether an individual is a child or an adult, it may also obtain a professional medical opinion based on dental or skeletal radiographs, commonly referred to as x-rays, to help make a determination. ICE's use of radiographs, however, has been criticized by some in the medical and advocacy communities as unreliable.

### **Legal Guidance on Unaccompanied Alien Children**

Since 1997, ICE and its precursor, the Immigration and Naturalization Service (INS), have been bound by the *Flores Settlement Agreement*. This agreement between the Department of Justice and a coalition of immigrants' rights groups established guidance on the treatment of minors in the custody of immigration officials. It also recognizes the particular vulnerability of minors and states that immigration officials will hold minors separate from unrelated adults. The agreement stipulated 3 to 5 days for the transfer of juveniles to a licensed juvenile shelter.

While the INS maintained its own program for housing juvenile aliens, the *Homeland Security Act of 2002* transferred responsibility for housing unaccompanied alien children from the INS to HHS ORR. ORR places unaccompanied alien children in juvenile facilities and foster care homes for the duration of their

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<sup>1</sup> *Homeland Security Act of 2002* (Public Law 107-296) November 25, 2002.

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immigration proceedings, or until they can be reunited with appropriate guardians in the United States.

Because unaccompanied children must be placed in separate facilities from adult detainees, an incorrect age determination may result in violating the *Flores Settlement Agreement*. While no statute or regulation describes an exact procedure for establishing an individual's age, the *Flores Settlement Agreement* instructs that if a "reasonable person" would conclude that an alien detained by immigration officials is an adult, despite his or her claim to be a minor, the individual shall be treated as an adult. The *Flores Settlement Agreement* also provides that immigration officials may require an alien to submit to a medical or dental examination conducted by a medical professional, or to other appropriate procedures, to verify his or her age.

In December 2008, Congress provided direction for developing age determination procedures in the *William Wilberforce Trafficking Victims Protection and Reauthorization Act of 2008* (Public Law 110-457), also known as the TVPRA. Effective March 23, 2009, the TVPRA required HHS to develop procedures for making a "prompt determination of the age of an alien" in consultation with DHS. According to the TVPRA, both DHS and HHS must use these procedures. While it did not specify which methods to use in the age determination process, the TVPRA established a minimum requirement that the government's procedures take into account multiple forms of evidence, including the nonexclusive use of radiographs for age determinations.<sup>2</sup>

### **Apprehension and Detention of Unaccompanied Alien Children**

ICE's Office of Detention and Removal Operations (DRO) is responsible for managing immigration cases for juveniles and adults. At the headquarters level, DRO's Juvenile and Family Residential Management Unit (JFRMU) manages policy for alien juveniles and families, and provides related oversight and support for ICE's field offices.

At the field level, ICE agents and officers encounter unaccompanied alien children in various ways. Unaccompanied alien children may be encountered and detained by ICE agents and officers participating on fugitive operations teams, or through enforcement actions undertaken by ICE's Office of Investigations.

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<sup>2</sup> *William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008* (Public Law 110-457) December 23, 2008.

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Unaccompanied alien children are also encountered and detained by local police departments, which notify the local ICE office. ICE field offices also reach out to local detention facilities through the Criminal Alien Program, which aims to identify and deport incarcerated criminal aliens after completion of their sentence. After apprehending an alien, ICE agents and officers collect and document available biographical information before placing juveniles and adults in appropriate facilities.

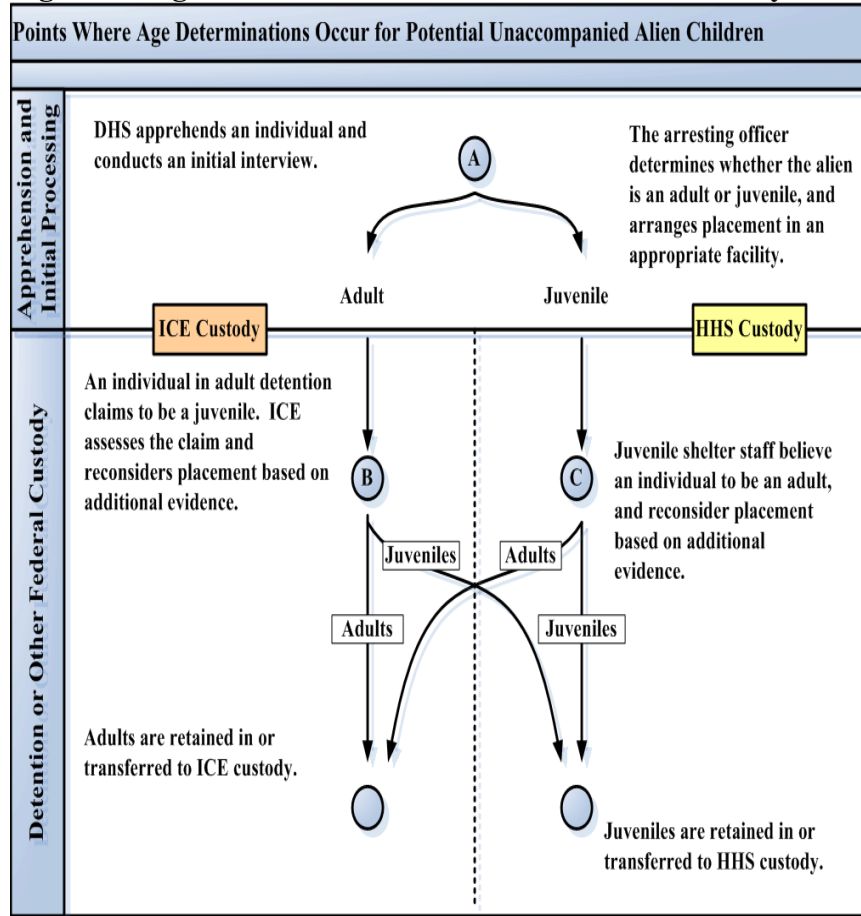
U.S. Customs and Border Protection (CBP) also apprehends unaccompanied alien children. Like their counterparts at ICE, CBP agents and officers typically bear responsibility for conducting initial interviews with the individual and gathering basic biographical information to determine whether an individual is a juvenile or adult. ICE assumes responsibility for effecting all deportations from the United States and maintains an Alien File (A-file) to document pertinent biographical and legal information on each alien it detains.

### **Age Determinations**

The need to verify a detained individual's age can arise at any point between his or her apprehension to release from custody. Figure 1 identifies three typical scenarios during an alien's apprehension and detention when age-related information is gathered and age determinations are made.

In figure 1, the first scenario occurs at point A when DHS initially apprehends an alien. DHS officers and agents make placement decisions based on whether an alien entering DHS custody is a juvenile or an adult. In some cases, however, it may not be readily apparent whether an individual is a juvenile or an adult. In these instances, the apprehending officer typically takes additional measures to determine an individual's age, guided by the "reasonable person" standard articulated in the *Flores Settlement Agreement*, along with specific agency guidance.

**Figure 1. Age Determinations in DHS and HHS Custody**



Source: Interviews with field staff

Under the second scenario, at point B in figure 1, officers make a more explicit age determination when an individual already detained in an adult detention facility claims to be a juvenile. In this case, facility personnel separate the individual from the detained adult population until ICE can acquire additional information to ascertain the individual’s date of birth.

Point C in figure 1 depicts the third scenario, in which an individual in a juvenile shelter is suspected of being an adult, either because of his or her own statements or through research by shelter staff. In these cases, the shelter’s staff is responsible for verifying the individual’s age. ICE accepts individuals who are determined to be adults into one of its adult detention facilities, provided the shelter staff supply documentation of the alien’s age; juveniles remain in the shelter.



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## **The Role of Radiographs in Age Determinations**

Without clear evidence indicating whether a person is either an adult or juvenile, ICE agents and officers may obtain the results from a dental and skeletal radiograph to assist with an age determination. A medical professional examines skeletal or tooth development as depicted on a radiograph and estimates the individual's chronological age, or age from date of birth. In the case of dental radiographs, dentists usually make assessments based on the development of an individual's third molars, or wisdom teeth, in both the upper and lower jaws. For skeletal radiographs, the examiner makes an age estimation based on bone development in the hand and wrist area.

Using radiographs of a person's bones or teeth, however, cannot produce a specific age due to a range of factors affecting an individual's growth. These include normal biological variation, as well as cultural and ethnic differences. The timing of puberty, diet, genetics, health, and geography can also affect tooth and bone development. We spoke with a pediatric physician who said that abuse and torture can affect bone growth as well.

Historically, the use of radiographs for age determinations has drawn upon research dating back to the 1930s and 1940s on bone growth in juveniles. Early studies, however, involved ethnically homogenous populations. Used in the context of immigration, where agencies encounter a variety of ethnicities, such limited studies do not adequately represent the individuals whose ages must be verified. More recent work, cited by some medical professionals we spoke with, has begun to account for ethnic variations in bone and tooth development.

Although the *Flores Settlement Agreement* permits "medical or dental" examinations, some advocacy groups have opposed the use of dental and skeletal radiographs as part of an age determination, arguing that the results are not reliable and could lead to individuals being inappropriately assigned to adult facilities or juvenile shelters. Reports released by the House Appropriations Committee express similar concerns.

## **Alternative Approaches to Age Determination**

In an earlier report, the House Appropriations Committee suggested that ICE employ "holistic age-determination methodologies" when assessing the age of those in its custody. The TVPRA, however, does not require the adoption of such an

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approach; nor does instruction released in March 2009 by HHS define or elaborate on what constitutes a holistic approach to age determinations. As part of our review, however, we attempted to discover what such an approach might consist of and what efforts ICE made in response to the committee's direction.

We could not identify a single, authoritative definition of what might constitute a holistic approach to age determination. Medical professionals we spoke with, including representatives of medical centers and universities as well as immigrants' rights advocates, were not aware of a specific holistic approach to age determinations. Several individuals in the medical community noted that psychological testing of individuals to determine exact age would be difficult. Some appeared to favor measuring biological factors over psychological testing, as the latter is more difficult to do and is even less predictable.

ICE indicated that it had studied the matter as well. Responding to congressional concerns, ICE stated that little information is available on a single, authoritative holistic method and it did not find people properly credentialed to perform such assessments. ICE further stated that despite extensive research, it did not find a standard or precise process or technique for conducting holistic age determinations.

## **Results of Review**

### **ICE Needs to Record and Track Age Determination Data**

Due to limitations in the data maintained by ICE regarding age determinations, we were unable to ascertain how often ICE had used radiographs to determine an individual's age. ICE does not collect information on the number of radiographs taken to help make an age determination, or on the number of times a determination had been reversed. The only information ICE could provide on age determinations was the number of times its field offices formally requested to use radiographs for age determination purposes. Headquarters officials we spoke with at ICE said that the agency plans to update its information systems to collect more data on age determinations. Such a step can help ICE monitor and evaluate its use of radiographs in better assessing age.

#### **ICE Does Not Track Radiographic Examinations**

ICE was unable to provide data showing the number of individuals who underwent a radiographic examination from the beginning of

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FY 2008 to April 2009. However, JFRMU officials said that this number is historically low. We also spoke with field office juvenile coordinators—DRO field personnel who oversee juvenile cases within a particular geographic area—who provided estimates of how many radiographs were taken in a given year for age determination purposes. Many juvenile coordinators indicated that radiographs were rare, commenting that they had not been aware of any radiographs performed in the past 2 years. A few indicated that a dental radiograph might occur as often as 2 to 5 times per month in their geographic area of responsibility.

The Division of Immigration Health Services (DIHS) provided us with the number of *requests* for a radiograph for an age determination. Field personnel submit Treatment Authorization Requests (TARs) to DIHS for health and medical services for detained aliens, including radiographs for age determinations. Information provided by DIHS showed that 258 radiograph requests were received from the beginning of FY 2008 to April 14, 2009. These requests covered 248 individuals, including 178 individuals in FY 2008 and 70 individuals through April of FY 2009. The remaining 10 TARs were either duplicates or requests for a second exam.

We were unable to rely on TAR figures to determine the exact number of radiographic exams performed for age determinations for two reasons. First, when field personnel submit a TAR for a radiograph, there is no assurance that a radiograph is actually taken. Of 89 alien files that we reviewed for individuals who were the subject of the TARs previously described, 40 files did not contain evidence of a radiograph.<sup>3</sup> Field office juvenile coordinators cited examples of exam that were requested but not carried out because they were able to verify age by other means, such as a birth certificate.

Second, while ICE officials said that field personnel are supposed to request radiographs for age determinations through DIHS, this does not always occur. DIHS officials agreed that requests might not be submitted in all cases and noted that access to TARWeb, the information system through which TARs are submitted, is limited. While most juvenile coordinators we spoke with were aware of either the TAR process or the need to request approval, several field office juvenile coordinators were unaware of the TAR

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<sup>3</sup> The 89 files were drawn from archives at the National Records Center based on the age-related information within each file. The sample is not representative and cannot be generalized to the detained population as a whole.

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process and indicated that notice of a radiographic exam being scheduled is not forwarded beyond their field office.

### **ICE Does Not Track Age Determinations That Were Reversed**

ICE could not account for the number of instances an age determination had been reversed, either correcting an instance in which an adult had been classified as a child or a child had been classified as an adult, or the number of times an age determination has been appealed.

Field office juvenile coordinators provided informal estimates on how many reversals they generally see in a given year. Of the 21 juvenile coordinators we interviewed, 12 indicated that they were familiar with instances in which a juvenile had been placed in an adult facility or an adult in a juvenile shelter. The frequency with which such inappropriate placements are identified ranged by field office, from twice over three years to about three times per week, according to the officers. Other officers we interviewed were not sure of the number or told us that they were unaware of any instances when this occurred.

### **ICE Has Initiated Efforts to Increase Collection of Age Determination Data**

ICE officials informed us that they plan to address limitations in the agency's ability to collect age determination data. Specifically, JFRMU is pursuing modifications to ICE's primary administrative case management system, the Enforcement Case Tracking System (ENFORCE), to help the agency track age determinations better in the future. Among the fields, it requested an entry to account for whether ICE field personnel requested a radiographic exam. JFRMU understands that these fields will be incorporated in an updated version of ENFORCE, due in December 2009.

### **Conclusion**

ICE reporting and management activities could benefit from the ability to track and assess information pertaining to age determinations centrally, including (1) the frequency of dental or skeletal radiographs, (2) instances in which an initial age determination and placement by DHS has been reversed, and (3) information used to support the reversal. This type of information will help ICE identify how often radiographs are used in the field, as well as gauge their contribution to the age determination process.

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## **Recommendation**

We recommend that the Assistant Secretary for U.S. Immigrations and Customs Enforcement:

**Recommendation #1:** Continue to enhance JFRMU's ability to collect and analyze data on the use of radiographs for age determinations. At a minimum, enhancements should provide JFRMU with the ability to track (1) the number of radiographs taken for age determinations, (2) date and results of the exam, and (3) age determinations and placement decisions that were later reversed.

## **ICE Recognizes Limits of Radiography for Age Determinations**

The House Appropriations Committee expressed concern that ICE was relying on radiographs for age determinations for aliens in its custody, and questioned the reliability of radiographic evidence that ICE uses when determining whether an individual is an adult or juvenile. Advocacy groups have made similar assertions and expressed concern that children or adults may be placed in inappropriate facilities.

Medical professionals we spoke with expressed skepticism that a radiographic exam could be used to discover specifically whether an individual has attained 18 years of age. However, they did generally agree that radiographic exams could provide a usable age range.

ICE recognizes the limits of radiographs as a precise indicator of age and in 2004 issued guidance on age determinations for custody decisions. This guidance, which is still in use, directed officers not to base age determinations solely on radiographs, but to consider the totality of available evidence. ICE's guidance cautions field offices about the variability of results from radiographic exams when used for age determinations. This guidance also notes many of the same factors affecting radiographic exam reliability that medical practitioners brought to our attention, including normal biological variations, nutrition, race, ethnicity, geographic location, socioeconomic status, and variations in interpreting radiographic exam results.

### **Evidence Used in Age Determination Cases**

ICE's 2004 guidance identifies a range of information sources that field officers may use to determine whether an individual is an adult or a juvenile, including results from radiographic exams.

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According to ICE's guidance, sources of information that can help establish whether an individual is a juvenile or adult include the following:

- Statements made by the alien, or by another individual with personal knowledge of the alien's age,
- Information or records from federal, state, local, or foreign government agencies,
- Documentation that can credibly establish date of birth,
- Results of dental or wrist bone radiographs conducted by an expert, and
- Assessments of the alien's physical appearance and behavior.

To assess the types of evidence that ICE uses in addition to radiographs for age determination purposes, we reviewed a sample of 89 A-files for which a radiograph had been requested. Of the 89 A-files that we reviewed, 49, or 55%, included evidence that a radiograph had been performed. Based on our file review and interviews with field staff, we conclude that ICE acquires multiple forms of available evidence, including radiographs, to help establish an alien's age in borderline cases.

#### Initial Evidence Used to Determination Age

During an apprehension, the arresting officer determines whether the individual is a juvenile or adult based on statements made in an interview, the alien's physical appearance, and any documents the alien might be carrying. Information acquired during interviews is recorded on ICE's form I-213, *Record of Deportable/Inadmissible Alien*. This information often plays a significant role when assessing whether someone is an adult or child. Juvenile coordinators we spoke with commented that appearance is a factor in an officer's determination; however, we noted minimal documented evidence that appearance was used as a factor during our file review.

ICE officers also check government records for biographical information, which is a useful step when records on the detained individual exist and the information is accurate. However, juvenile coordinators said that in most cases, juveniles do not have existing records since it is their first time attempting to cross into and remain in the United States.

In the absence of contradictions in age determination documentation and other related evidence, ICE holds adults in its detention facilities and transfers juveniles to juvenile shelters identified by HHS ORR.

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### Additional Evidence Used in Age Determination Cases

Age is more difficult to determine in certain instances, specifically when an individual's appearance does not closely reflect his or her actual age. Medical professionals we interviewed said that both adults' and children's physical appearance and behavior can vary widely based on several factors, including physical and emotional maturity, exposure to climate, work and life experiences, and trauma. A representative from HHS agreed with this assessment, noting that individuals' appearance and behaviors can be subject to malnutrition, work experience, and trauma.

In these cases, interview statements and appearance or behavior are not always sufficient. Juvenile coordinators told us of instances where detained aliens had initially provided inaccurate dates of birth to apprehending officers. Juvenile coordinators said that sometimes smugglers direct aliens to claim that they are older, or children will lie about their age so they can stay with adults with whom they were apprehended.

When arresting officers question an alien's claim as being an adult or juvenile, or an individual detained in an adult facility claims to be a juvenile, ICE officers must seek other forms of evidence to establish his or her actual date of birth. In these cases, additional information may include results from radiographic examinations; further interview statements from the alien or others; documentation from the alien's family or home country consulate; other forms of input from the alien's home country consulate; and, any combination of these or other credible sources.

During our file review, we noted instances where a detained alien's date of birth recorded after initial apprehension did not match their date of birth on a birth certificate or other formal document. In these cases, the apprehending officer obtained an incorrect date of birth for an alien, which may have contributed to their initial placement.

#### *Radiographs*

Most juvenile coordinators we interviewed said that radiographs are used as a last resort when ICE may question an alien's claim of being a juvenile but cannot acquire other information to make an appropriate age determination. ICE officials explained that requested birth certificates may arrive late, and sometimes not at all. While some juvenile coordinators said that their field offices

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do not use radiographic exams, others indicated that a radiographic exam is used when ICE must verify age in the absence of requested documentation or other credible information.

One advantage of using radiographs is that they can be completed quickly. A comparison between the requested dates for radiographs and the actual examination, when such a comparison was possible, showed that for 42 of the 49 cases in our sample, the radiographs took place on average within 1 day of the request. In two of those cases, radiographs were conducted before the requests were submitted, suggesting that ICE officers may seek approval retroactively. This fast turnaround can be an important advantage given ICE's time constraints and when other age-related information is not forthcoming. Officials in DRO and DHS' Office for Civil Rights and Civil Liberties noted that the *Flores Settlement Agreement* time constraints create pressures on ICE to make age determinations as soon as possible. Juvenile coordinators indicated that radiographs can be done within a short timeframe.

#### *Information From Other Individuals*

ICE officers also make efforts to acquire information on an alien from others with whom the individual was apprehended. Some individuals have contact information for family in the United States. In these cases, ICE can attempt to contact relatives to seek confirmation of the individual's age, as well as start to identify legal guardians.

#### *Documentation*

In practice, ICE officers indicated a preference for credible documentation to establish date of birth. Examples of these documents include birth certificates, identity cards, school and baptismal records, passports, and other travel documents. Officers attempt to obtain documentary evidence from the aliens, their families, or their home country consulate. Documentation attesting to the alien's date of birth was included in 32 of the 49 A-files with evidence of radiographs.

#### *Consular Involvement*

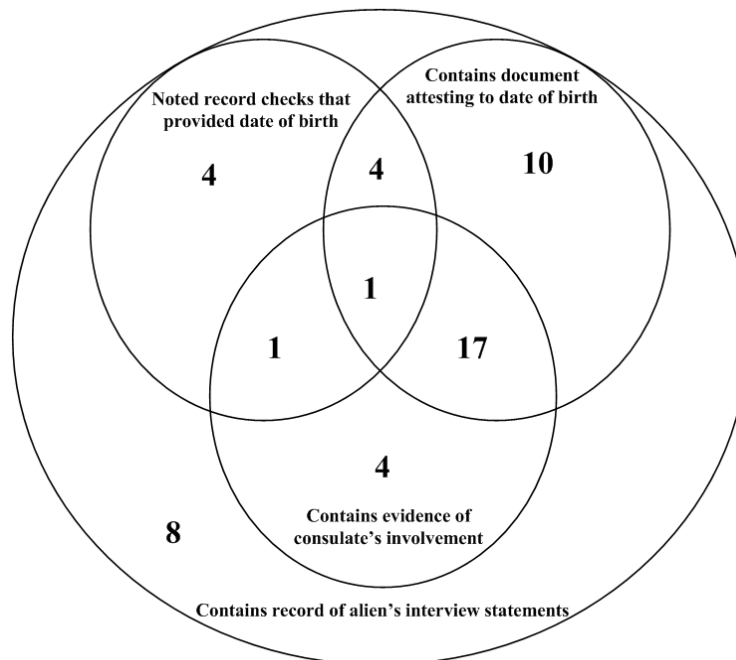
An ICE officer's contact with consulates can be helpful in establishing an individual's age. Consulates have some ability to provide or verify documentation and confirm information previously provided to ICE. They can also acquire and verify



information through their interviews with detained aliens. Consulates can also compare an alien’s biographical information to records in their data systems to verify information provided to ICE. Juvenile coordinators agreed that consulates tend to be very responsive to juvenile cases; however, their response times varied by case. Overall, juvenile coordinators said that ICE officers contact consulates regularly as they attempt to acquire additional information about a potential juvenile. Documented involvement by the alien’s home country consulate was included in 23 A-files that also had radiographs.

Figure 2 shows the different combinations of information contained in the 49 A-files that also contained results from a radiograph.

**Figure 2. A-Files with Evidence of a Radiograph**



Source: A-file review and OIG Analysis

**ICE Needs to Provide Instructions to Field Offices for Implementing HHS Guidance**

The TVPRA provided DHS and HHS with direction for developing procedures for age determinations. In addition to charging HHS with the development of procedures for making age determinations in consultation with DHS, the TVPRA permits the nonexclusive use of radiographs for age determinations.

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In response to the TVPRA, HHS released program instruction on age determinations in March 2009. As of September 2009, this guidance had been signed by the acting director of ORR. Before releasing its own updated field guidance, however, ICE indicated that it is awaiting the release of HHS' finalized policy on age determinations.

HHS' guidance contains the essential elements of ICE's 2004 policy in that DHS and HHS will use documentation, statements from the alien and other individuals, record checks, and bone or dental examinations as part of the age determination process. Compared with ICE's 2004 guidance, however, HHS' procedures limit the types of people who can provide statements on an alien's age to the alien, the alien's parents, and those encountered with the alien.<sup>4</sup> The standard in ICE's 2004 guidance is broader, directing officers to consider statements from those with a personal knowledge of the alien's age that the ICE officer concludes can credibly attest to the age of the alien.

Another significant difference is that HHS' guidance does not include appearance or behavior as criteria for evaluating whether an individual is an adult or juvenile, but instead lists appearance as a challenge to the age determination process. It identifies additional challenges as diminished mental capacity, contradictory or fraudulent documents and statements, and unavailable documentation on date of birth.

ICE's 2004 guidance does comprehensively address the uses and limitations of radiography for making age determinations, something HHS' program instruction excludes. HHS also includes a requirement on the use of radiographs as a last resort and only when other information listed in the guidance is not available. It also instructs those using radiographs to favor determining the alien to be a minor if the results are ambiguous.

Figure 3 offers a basic comparison of elements of ICE's 2004 HHS' 2009 policies.

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<sup>4</sup> HHS also allows sworn affidavits from parents or other relatives if the alien is already in HHS custody.

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### **Figure 3. Information Used in Age Determinations**

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<i>ICE's 2004 Guidance on Age Determinations</i>	<i>HHS' 2009 Guidance on Age Determinations</i>
✓ Statements from the alien	✓ Statements from the alien
✓ Statements from those with personal knowledge of the alien who can credibly attest to date of birth	✓ Statements from parents or others apprehended with the alien
✓ Record Checks	✓ Record Checks
✓ Documentation	✓ Documentation
✓ Results from radiographic exams	✓ Results from radiographic exams
✓ Physical Appearance and Behavior	

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**Source: OIG Comparison of ICE DRO and HHS ORR policy documents**

While these policies are similar in most respects, it is important for ICE to release updated instructions to field officers that clarify ICE's post-TVPRA approach to age determinations and conform to HHS' guidance. In particular, field offices should receive instruction on the role that appearance and behavior play in considering whether an individual should be placed as an adult or juvenile, as well as the types of individuals who can provide information on a detained alien's age. Procedures for handling individuals suffering from mental disabilities would aid field personnel when faced with such a scenario. ICE should also address the important role consulates can play for helping to establish the age of individuals in custody, when such a step would not adversely affect the alien.

#### **Conclusion**

Based on our review of specific documentation and interviews with relevant officials, we conclude that ICE officials maintain a keen awareness of the limitations of radiography and a preference for establishing age by other means.

Legal requirements to place all unaccompanied juveniles in HHS custody make the timing of age determinations critical. ICE does not, however, immediately or simultaneously receive all the information mentioned. The A-files we reviewed did not document the decision process used by ICE to determine age, or the specific information and evidence that contributed to the age determination. In some files, officers included a "note to file"

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marking the date an age determination was made, the result, and the information used to reach a decision. This is a commendable best practice by some field personnel that ICE should consider adopting on a more widespread basis.

## **Recommendation**

We recommend that the Assistant Secretary for U.S. Immigrations and Customs Enforcement:

**Recommendation #2:** Update and release guidance that clarifies how DRO field offices are to conduct age determinations following the TVPRA based on HHS' guidance. ICE's field guidance should be consistent with HHS' procedures, address challenges, identify best practices for establishing age, and include requirements for documenting the age determination process.

### **Radiographic Exam Results Need to Be Properly Documented**

ICE officers rely on the medical professionals who conduct radiographic exams to interpret exam results. ICE requires medical professionals who conduct radiographic exams to complete and return a two-page worksheet. The worksheet includes entries for information such as (1) whether the examined individual is 18 years or older; (2) the medical professional's degree of certainty regarding the age determination, which should be in the form of a percentage; (3) an explanation of the medical professional's conclusion; and (4) the research and materials that formed the basis for their conclusion. It requires a practitioner to indicate whether he or she is a physician, dentist, or forensic anthropologist. ICE also permits practitioners to generate their own report.

ICE uses these worksheets and reports to help make and document its age and custody determinations. Therefore, it is important that worksheets (1) not oversimplify or overstate the results of a radiographic exam, (2) are based on up-to-date scientific research, and (3) identify underlying reference materials and any limitations of the materials or methods used. Age estimation reports that consistently provide ICE with such information can help ICE officers weigh the results of a radiographic exam alongside additional evidence.

The quality and extent of documentation ICE receives on radiographic exam results varies. Most radiographic reports that we reviewed included a combination of data such as an average

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age for individuals with equivalent tooth development as the subject, an age range or standard deviation, and a percentage probability on whether the individual had attained his or her 18th birthday. Specific medical professionals who provided multiple reports to ICE reported results in a consistent format; however, the providers differed among themselves on the types of data provided to ICE, and the presentation format. Some used ICE's worksheet while others did not. Some providers furnished an age range while others included the average age of individuals with equivalent development and the probability that the individual had attained 18 years of age. In several cases, the provider furnished minimal information other than the estimated age and the degree of certainty in that conclusion.

Radiographic exam reports prepared by medical professionals also do not always include full reference information regarding the specific studies used as a basis for their age determination, which is a requirement in ICE's 2004 guidance. In our sample of A-files, professionals who provided information cited three separate sources, but provided a full citation from only one case. In another instance, one dentist consistently cited a study based on white males and females, even though subjects of the age determinations appeared to be Hispanic.

ICE needs to ensure the quality of its radiographic exam results by obtaining the citations for studies that physicians used to determine age. By receiving more complete information on the type of study used to make an age estimation, the underlying scientific data and methods that support its age determination can be based on more current research and reflect the appropriate ethnicity of the individual.

### **ICE Needs to Prioritize Use of Providers with Specialized Experience**

ICE's approach for selecting physicians to conduct radiographic exams for age determinations is inconsistent. ICE's 2004 guidance requires field offices to consult with Public Health Service (PHS) staff when selecting a medical professional to conduct a radiographic exam. In practice, most juvenile coordinators we spoke to said that they schedule appointments for dental radiographs with the same dentists used by their predecessors. Field office juvenile coordinators did not know how professionals were initially selected and were unaware of any list of practices that ICE or PHS had released to the field. Some juvenile coordinators added that if they needed a dental radiograph, they chose providers based their

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proximity to the office. Other coordinators said that they consulted a supervisor, headquarters, or PHS staff in their area to find a dentist to conduct an exam. Some juvenile coordinators we interviewed were not sure whether to seek providers with a specific certification, or what certification or specialty would be most useful. One suggested a pediatric dentist might be best; others said that a forensic dentist is preferable.

Professional certifications in forensic dentistry are available to those who work in the field and who have completed a series of requirements, including examinations. Certifications beyond standard dental or medical degrees can provide assurance that the medical professionals asked to estimate an alien's age based on radiographic exams have additional, specialized training. However, ICE has not identified credentials or certifications that it prefers for these purposes, or physicians with these certifications.

ICE could start by ensuring that juvenile coordinators can identify and use professionals with the best qualifications to conduct forensic radiographs and provide age estimates. Equipping field offices with information on medical professionals who are specially trained and certified in forensic science can aid them in making appointments for radiographs. While using medical professionals with forensic science credentials might be difficult given location and availability, ICE would benefit by identifying and using these professionals wherever practical. Identifying professionals with such credentials provides a minimum level of certainty that those conducting exams are using the most current research and methods and are aware of limitations. It also guarantees that professionals have demonstrated their skill in forensic science through additional training, examination, and certification. With input from knowledgeable authorities, ICE should especially identify individuals who are routinely asked to provide age estimations based on radiographic exams; assess their degree of specialization in forensics, and direct field offices to use those who possess additional qualifications.

## **Recommendation**

We recommend that the Assistant Secretary for U.S. Immigrations and Customs Enforcement:

**Recommendation #3:** Release guidance on the selection of “best-qualified” practitioners to conduct radiographic exams and report results when practical.

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## Management Comments and OIG Analysis

ICE provided comments to our draft report, concurring with all three recommendations. Below is a summary of ICE's written response to our recommendations and our analysis of the response. A copy of ICE's response, in its entirety, appears in Appendix B.

**Recommendation #1:** Continue to enhance Juvenile and Family Residential Management Unit's (JFRMU) ability to collect and analyze data on the use of radiographs for age determinations. At a minimum, enhancements should provide JFRMU with the ability to track (1) the number of radiographs taken for age determinations, (2) date and results of the exam, and (3) age determinations and placement decisions that were later reversed.

**ICE Response:** ICE concurred with our recommendation and said it will continue efforts to improve its ability to track data on age determinations.

**OIG Evaluation:** This recommendation is resolved, but remains open pending confirmation that ICE can accurately account for the number of radiographs taken for age determinations over a given period as well as produce the number of instances an individual was mistakenly placed in either a juvenile or an adult facility. Such information can help ICE evaluate the efficacy of its age determination process and identify error rates when making placement decisions.

**Recommendation #2:** Update and release guidance that clarifies how DRO field offices are to conduct age determinations following the TVPRA and release of HHS' guidance. The guidance they provide should be consistent with HHS' procedures, identify best practices for establishing age, and include requirements for documenting the age determination process.

**ICE Response:** ICE concurred with our recommendation. However, it said that as of September 15, 2009 HHS has only issued field guidance based on a proposed draft policy. ICE said that it will disseminate updated field guidance after HHS has released a final policy. ICE added that in the interim it will continue to use its 2004 policy, which closely mirrors the draft HHS policy. ICE noted that HHS' draft policy was based in part on DRO's field guidance.

**OIG Evaluation:** This recommendation is resolved, but remains open pending receipt of new field guidance for ICE field offices

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that reflects age determination procedures released in final form by HHS.

In addition, while ICE's 2004 guidance shares many similarities with HHS' 2009 procedures, as we report, both documents offer guidance not contained in the other. ICE can improve its field guidance by including, at minimum, elements of both policies such as challenges associated with age determinations, the limits of using radiographs, and how to handle ambiguous radiographic exam results. By incorporating these subjects into new field guidance ICE can enhance its existing field instructions and equip both new and more experienced field officers and agents with basic procedures for handling different types of cases.

**Recommendation #3:** Release guidance on the selection of "best qualified" practitioners to conduct radiographic exams and report results when practical.

**ICE Response:** ICE concurred with our recommendation and said that it will work with its Division of Immigration Health Services to develop such guidance.

**OIG Evaluation:** This recommendation is resolved, but remains open pending receipt of such guidance. Making field officers aware of medical or dental professionals certified in forensics can facilitate acquisition of a more credible age estimation under tight time constraints.



## Appendix A

### Purpose, Scope, and Methodology

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In a House Report associated with the *Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009* (P.L. 110-329),<sup>5</sup> the House Appropriations Committee voiced concern that DHS had “not ceased its reliance on bone and dental forensics for child age determination, as directed” in a previous report. This previous report suggested that ICE use holistic age-determination methodologies.<sup>6</sup> The House Appropriations Committee also asked us to report on any cases in which bone and dental forensics were used in FY 2008 or 2009.<sup>7</sup>

At the request of the House Committee on Appropriations, we reviewed ICE’s age determination practices for those in its custody, focusing on the use of dental and skeletal radiographs. Our objectives were to (1) identify the practices and procedures ICE used to determine the age of undocumented detainees held in ICE custody in fiscal 2008 and 2009; (2) determine whether ICE implemented age determination methodologies as identified in House Report 110-181, attached to P.L. 110-161; and (3) document any cases where ICE relied on bone and dental forensics for child age determinations in FY 2008 and 2009.

We conducted field work at ICE headquarters in Washington, DC, and the National Records Center in Lees Summit, MO. We interviewed headquarters staff at ICE DRO, and field office juvenile coordinators at DRO offices nationwide via telephone. We also spoke to individuals working in the health care, academic, and advocacy communities across the United States on the use of radiographs for determining an individual’s age.

We reviewed 89 A-files to assess how radiographs are used in age determinations, what other evidence ICE collects for this purpose, and how radiographic exams are presented to ICE. We reviewed and analyzed applicable laws, policy documents, records, and nongovernmental reports and journal articles relating to age determinations.

We conducted our review between March and June 2009 under the authority of the *Inspector General Act of 1978*, as amended, and according to the *Quality Standards for Inspections*, issued by the Council of the Inspectors General on Integrity and Efficiency.

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<sup>5</sup> H.R. 110-862.

<sup>6</sup> H.R. 110-181.

<sup>7</sup> Pursuant to the House Appropriations Committee’s request, we focused on ICE’s practices for age determinations exclusively, and did not examine CBP’s role in making age determinations for unaccompanied alien children.

## Appendix B Management Comments to the Draft Report

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Office of the Assistant Secretary  
U.S. Department of Homeland Security  
500 12th Street, SW  
Washington, DC 20536



**U.S. Immigration  
and Customs  
Enforcement**

September 28, 2009

MEMORANDUM FOR: Carlton I. Mann  
Assistant Inspector General for Inspections  
Office of Inspector General

FROM: Robert F. De Antonio   
Director  
Audit Liaison Office

SUBJECT: ICE Response to Recommendations in the OIG Draft Report: "Age  
Determination Practices for Unaccompanied Alien Children in ICE  
Custody"

U.S. Immigration and Customs Enforcement (ICE) appreciates the opportunity to comment and respond to the three recommendations in the subject Office of Inspector General (OIG) draft report.

**OIG Recommendation 1:** Continue to enhance Juvenile and Family Residential Management Unit's (JFRMU) ability to collect and analyze data on the use of radiographs for age determinations. At a minimum, enhancements should provide JFRMU with the ability to track (1) the number of radiographs taken for age determinations, (2) date and results of the exam, and (3) age determinations and placement decisions that were later reversed.

**ICE Response to Recommendation 1:** ICE concurs with the recommendation and will continue efforts to enhance the ability of ICE to track radiographs used for age determination.

**OIG Recommendation 2:** Update and release guidance that clarifies how DRO field offices are to conduct age determinations following the TVPRA and release of HHS' guidance. The guidance they provide should be consistent with HHS' procedures, identify best practices for establishing age, and include requirements for documenting the age determination process.

## Appendix B

### Management Comments to the Draft Report

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Subject: ICE Response to Recommendations in the OIG Draft Report: “Age Determination Practices for Unaccompanied Alien Children in ICE Custody”  
Page 2

**ICE Response to Recommendation 2:** ICE concurs. However, as required by the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (2008), Health and Human Services (HHS), in consultation with DHS, must develop procedures for making age determinations to be used by DHS and HHS. As of September 15, 2009, HHS issued only field guidance based on a proposed draft policy. Upon receipt of the final HHS policy, ICE DRO will disseminate new field guidance based on the final HHS policy. In the interim, DRO’s current field guidance closely mirrors the draft HHS policy. It should be noted that the HHS draft policy was based in part upon DRO’s field guidance.

**OIG Recommendation 3:** Release guidance on the selection of “best qualified” practitioners to conduct radiographic exams and report results when practical.

**ICE Response to Recommendation 3:** ICE concurs with this recommendation and will collaborate with the Division of Immigration Health Services (DIHS) to develop such guidance.

Should you have any questions or concerns, please contact Margurite Barnes, OIG audit portfolio manager at (202) 732-4161 or by e-mail at [Margurite.Barnes@dhs.gov](mailto:Margurite.Barnes@dhs.gov).

**Appendix C**  
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**Appendix D**  
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